

7-29-2010

City of Pocatello v. Idaho Clerk's Record v. 5 Dckt. 37723

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56(c) hereby moves for summary judgment on certain objections filed by Pocatello in the above-referenced subcases.

There are no genuine issues of material of fact with respect to the point of diversion for Pocatello's previously decreed Mink Creek surface water rights. In addition, there are no genuine issues of material fact with respect to the purpose of use and place of use for Pocatello's previously licensed groundwater and wastewater irrigation rights. Pocatello cannot collaterally attack its prior decrees and licenses in the SRBA. Therefore, the following objections to Pocatello's prior decreed and licensed water rights should be dismissed as a matter of law:

#29-271, #29-272, #29-273

5. Point(s) of Diversion:

Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights.

#29-7118, #29-7119, #29-7431, #29-7770

7. Purpose(s) of Use:

Should be: municipal, see also "Reasons supporting objections" below.

9. Place of Use:

Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law ..."

Alternatively, the point of diversion objection to water right claims #29-271, #29-272, and #29-273 should be dismissed for violating AO1 4(d)(1)(b). Pocatello has not filed amended claims for these water rights and cannot do so by filing an objection. This motion is supported by the *Memorandum in Support of SWC Motion for Summary Judgment* and the *Affidavit of Travis L. Thompson in Support of SWC Motion for Summary Judgment* submitted together herewith. The Coalition requests oral argument on this motion, to be held on January 17, 2007 at

1:30 p.m. at the SRBA Courthouse as set by the *Eighth Amended Trial Scheduling Order* issued on November 21, 2007.

DATED this 30th day of November, 2006.

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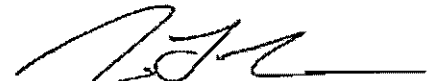
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November, 2006, I served the foregoing SURFACE WATER COALITION'S MOTION FOR SUMMARY JUDGMENT upon the following:

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Attorneys for United States of America


Travis L. Thompson

EXHIBIT A

Subcase Numbers

29-00271

29-00272

29-00273

29-07118

29-07119

29-07431

29-07770

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**IN THE COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

)
) Subcase Nos.: EXHIBIT A
) (City of Pocatello)
)
) **MEMORANDUM IN SUPPORT OF**
) **SWC MOTION FOR SUMMARY**
) **JUDGMENT**
)

COMES NOW, American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company (collectively "Surface Water Coalition" or "Coalition"), by and through their undersigned attorneys of record, and submits this

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TWIN FALLS COUNTY CLERK
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MEMORANDUM IN SUPPORT OF SWC MOTION FOR SUMMARY JUDGMENT pursuant to AO1(6)(f) and I.R.C.P. 56(c). For the reasons set forth below, this Court should grant the Coalition's motion and dismiss the identified objections filed by Pocatello with prejudice.

INTRODUCTION

The Coalition moves for summary judgment on one narrow issue related to various objections filed by Pocatello: "Can Pocatello use the SRBA as a means to collaterally attack its prior decreed and licensed water rights?" The answer is no. Pursuant to Idaho law as well as this Court's precedent, it is well-established that the SRBA is not a proper forum to collaterally attack prior water right decrees and licenses. In addition, the SRBA's Rules of Procedure prohibit Pocatello from attempting to change an element of its water right claims by way of an objection.

Accordingly, Pocatello's objections as to the point of diversion for water rights 29-271, 29-272, and 29-273 must be dismissed since these previously decreed irrigation surface water rights do not include Pocatello's municipal wells as an "alternate" point of diversion. In addition, Pocatello's objections as to the purpose and place of use for water rights 29-7118, 29-7119, 29-7431, and 29-7770 must also be dismissed since these previously licensed water rights identify a specific purpose of use (irrigation) along with a specific place of use (appurtenant acres). Pocatello cannot change its licensed irrigation groundwater and wastewater rights into "municipal" water rights to be used anywhere in Pocatello's service area. In sum, Pocatello cannot use the SRBA as an alternative to filing an application for transfer with the Idaho Department of Water Resources ("Department"). Therefore, the Court should grant the Coalition's motion and dismiss Pocatello's objections.

STATEMENT OF FACTS

29-271, 29-272, 29-273

Pocatello's Mink Creek water rights (#29-271, #29-272, and #29-273) were originally decreed by the Bannock County District Court on June 5, 1926 in the *Sam B. Smith, Administrator, et. al. v. City of Pocatello, et al.* ("Smith Decree") proceedings. See Ex. A to *Thompson Aff.* These decreed surface water rights specified a point of diversion in the NE1/4 of the SE1/4 of Section 13, Township 8 South, Range 34 East, located as the confluence of the West and South Forks of Mink Creek. See *id.* Pocatello filed a *Notice of Claim* for each right on April 19, 1990. See Exs. B.1, B.2, and B.3 to *Thompson Aff.* On all three claims, Pocatello's mayor claimed, under oath, that the "diverting works" consisted of a "diversion dam, headgate and pipeline to system."¹ Nowhere in any of the claims did Pocatello aver that its groundwater wells were "alternate" points of diversion for these surface water rights. Moreover, nowhere in any of these claims did Pocatello claim that the source was anything other than Mink Creek.

The Director recommended Pocatello's Mink Creek water rights on July 10, 2003. See Exs. C.1, C.2, and C.3 to *Thompson Aff.* The Director's Report listed the point of diversion as claimed by Pocatello. On November 14, 2003, Pocatello filed objections to its Mink Creek water rights. See Exs. D.1, D.2, and D.3 to *Thompson Aff.* Only Pocatello's objection to water right #29-272 disagreed with the Director's recommended points of diversion. See *id.* Accordingly, Pocatello apparently *agreed* with the Director's recommended points of diversion for water rights #29-271 and #29-273 as of November 14, 2003. Four days later, Pocatello filed *Amended Objections* to all of its Mink Creek water rights. See Exs. E.1, E.2, and E.3 to *Thompson Aff.* Contrary to the initial objections, this time Pocatello objected to the points of diversion for all claims and alleged that they should "include all ground water points of diversion for the City of

¹ The Notice of Claim for water right 42-272 also included "storage tanks" in the diverting works section.

Pocatello's municipal water rights." *See id.* Pocatello further stated it would seek leave "from the court to amend the notice of claim . . . to properly reflect the elements as set forth above." *See id.* Pocatello has yet to file any amended claims for its Mink Creek water rights.

As to the Mink Creek water rights Pocatello offered the following reason for its *Amended Objection* to the points of diversion element:

3. Point of diversion: The City of Pocatello's municipal wells derive their supply from the Lower Portneuf River Valley Aquifer that underlies the Portneuf River as it flows through the City of Pocatello. *Mink Creek and Gibson Jack Creek are connected to the Lower Portneuf River Valley Aquifer upstream of the City of Pocatello's municipal wells. Due to this interconnection, these municipal wells divert these surface water priorities as they are legally and physically available.* Leave will be sought from the court to amend the notice of claim for this water right to properly reflect the elements as set forth above.

See Exs. E.1, E.2, and E.3 to *Thompson Aff.* (emphasis added).

29-7118, 29-7119

Pocatello's irrigation groundwater rights #29-7118 and #29-7119 were licensed by the Department on January 9, 1975. *See* Exs. F.1 and F.2 to *Thompson Aff.* Both licenses contained a specified number of acres in particular quarter quarter sections. *See id.* Pocatello did not appeal or seek judicial review of the licenses that were issued by the Department.

On April 19, 1990, Pocatello filed *Notices of Claim* for these water rights with the SRBA Court. *See* Exs. G.1 and G.2 to *Thompson Aff.* Pocatello claimed the water rights as they were licensed by the Department, for irrigation purposes for the acres identified in the licenses. *See id.* On April 25, 2003, Pocatello filed a single *Amended Notice of Claim* for the two irrigation groundwater rights, claiming a "municipal" purposes of use, "32 WELLS" for the points of diversion, and a place of use as the "service area" of the city. *See* Ex. H to *Thompson Aff.* Pocatello filed an amended claim for the previously licensed water rights even though the water

system is not connected to the rest of Pocatello's municipal water system. *See Supplemental Director's Report Regarding City of Pocatello's Basin 29 State-Based Water Rights* at 7 ("The City also has three wells used for the irrigation of land used for growing crops. Wells 41 and 42 are used to irrigate 578.5 acres of crops near the western edge of the airport. *See* Map 4. . . . These wells were recommended as irrigation wells and not as part of the City's interconnected wells system for municipal use.") The Director recommended the water rights as licensed (and originally claimed by Pocatello) on July 10, 2003. *See* Exs. I.1 and I.2 to *Thompson Aff.* Pocatello filed an *Objection* on November 14, 2003, only disagreeing with the place of use element. *See* Exs. J.1 and J.2 to *Thompson Aff.* However, four days later, Pocatello filed an *Amended Objection*, objecting to the purpose of use and the place of use (with different language than the first objection). *See* Exs. K.1 and K.2 to *Thompson Aff.*

29-7431

Pocatello's water right #29-7431 ("Wastewater Right") was originally licensed by the Department on June 11, 1987. *See* Ex. L to *Thompson Aff.* The "waste water" right was licensed for "irrigation" purposes on 777 acres. *See id.* Pocatello filed a *Notice of Claim* with the SRBA Court for its Wastewater Right on April 19, 1990. *See* Ex. M to *Thompson Aff.* The right was claimed as it was licensed in 1987. *See id.* Pocatello then filed an *Amended Notice of Claim* on April 25, 2003. *See* Ex. N to *Thompson Aff.* This time, Pocatello claimed "REUSE of municipal diversions" as an additional source, "32 WELLS" as the points of diversion, "municipal" as the purpose of use, and the city's "service are" as the place of use. *See id.* Again, Pocatello made such a claim despite the fact the well is not connected to the rest of Pocatello's municipal water system. *See Supplemental Director's Report Regarding City of Pocatello's Basin 29 State-Based Water Rights* at 7 (The WPC Well is used to irrigate 280 acres of crops on the land where

the city applies the solid waste (sludge) from its wastewater treatment facility. *See* Map 4. These wells were recommended as irrigation wells and not as part of the City's interconnected wells system or for municipal use."'). The Director recommended Pocatello's Wastewater Right as licensed (and originally claimed by Pocatello) on July 10, 2003. *See* Ex. O to *Thompson Aff.* 29-7770

Pocatello's water right #29-7770 was permitted by the Department on December 9, 1989. *See* Ex. P to *Thompson Aff.* Pocatello submitted proof of beneficial use for this irrigation water right on April 5, 1990. *See* Ex. Q to *Thompson Aff.* Pocatello's sworn statement explains that the water right was used for "286 acres" for irrigation purposes. *See id.* Pocatello then filed a *Notice of Claim* in the SRBA on April 19, 1990. *See* Ex. R to *Thompson Aff.* A license for water right #29-7770 was issued on January 2, 2003.² *See* Ex. S to *Thompson Aff.* Thirteen years later Pocatello filed an *Amended Notice of Claim* on April 25, 2003, this time alleging "32 WELLS" for the points of diversion, "municipal" purpose of use, and the city's "service area" for the place of use. *See* Ex. T to *Thompson Aff.* The Director recommended the water right as licensed on July 10, 2003. *See* Ex. U to *Thompson Aff.* Pocatello filed its first *Objection* on November 14, 2003, but it did not object to the "irrigation" purpose of use or specific 286 acres as the place of use. *See* Ex. V to *Thompson Aff.* Four days later, Pocatello filed an *Amended Objection* which took issue with the purpose and place of use as recommended by the Director. *See* Ex. W to *Thompson Aff.*

² Counsel for the Coalition has been unable to locate an actual copy of the license for water right #29-7770 from IDWR's website. Exhibit S to the *Thompson Aff.* is a water right report downloaded from IDWR's website which indicates the date the water right was licensed and the elements as presumably defined by the license. The exhibit also contains correspondence from IDWR regarding the license (October 28, 2005 Tuthill Letter to Beeman; June 23, 2005 Peppersack Memorandum to Tuthill). A review of Ex. M to the *Supplemental Director's Report* reveals that the license and documents are related to water right #29-0770, not #29-7770. IDWR should correct this mistake and submit additional information to the Court to ensure the proper documents are in the record which are referenced in the supplemental report. *See Supplemental Director's Report* at 20, 21, Ex. M.

STANDARD OF REVIEW

Summary judgment is appropriate when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c); *Brown v. Miller*, 140 Idaho 439, 442 (2004). When a case is tried before the court without a jury, such as a subcase in the SRBA, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant summary judgment despite the possibility of conflicting inferences. *Stafford v. Klosterman*, 134 Idaho 205, 207 (2000).

ARGUMENT

Idaho law prohibits Pocatello from collaterally attacking and seeking to change the elements of its previously decreed and licensed water rights through the SRBA. In turn, Pocatello cannot use the SRBA as a way to evade the requirement to file an application for transfer with IDWR under Idaho Code § 42-222. Finally, Pocatello cannot transform decreed surface water rights into groundwater rights (by way of an alternate point of diversion theory) and licensed irrigation groundwater and wastewater rights with specific places of use into municipal water rights to be used anywhere in Pocatello’s service area. The Court should grant the Coalition’s motion as a matter of law.

I. Pocatello Cannot Use the SRBA as a Forum to Collaterally Attack its Prior Water Right Decrees and Licenses.

The facts relating to Pocatello’s previously decreed surface water rights and previously licensed irrigation ground water rights are undisputed. Pocatello’s Mink Creek surface water rights were decreed for irrigation purposes by the *Smith Decree* in 1926. No wells were decreed as points of diversion for these water rights. In other words, the source for these water rights is a

surface stream, not groundwater, as Pocatello's point of diversion objection implies. Pocatello's irrigation groundwater rights were licensed by IDWR in 1975 and 2003. Pocatello's Wastewater irrigation right was licensed by IDWR in 1987. These irrigation groundwater and wastewater rights are not connected to Pocatello's interconnected municipal well system, they are discrete and separate systems that are used for irrigation purposes on specific acres as permitted by the prior water right licenses. Pocatello did not judicially challenge any of its licenses that were issued by IDWR.

Pocatello, through objections to the Director's recommendations, now seeks to change the elements of its previously decreed and licensed water rights in the SRBA. Contrary to the "binding effect" of its prior decrees and licenses, Pocatello seeks to change its Mink Creek water rights by adding points of diversion (which in essence changes the source), and its groundwater and wastewater irrigation rights by changing the place of use and purpose of use. Pocatello cannot escape the binding effect of its prior decrees and licenses and change its water rights unless it files a transfer with IDWR. *See* I.C. § 42-220; *State v. Hagerman Water Right Owners*, 130 Idaho 736 (1997).

As recently reaffirmed by the SRBA Court's Presiding Judge, Idaho law prohibits Pocatello's "collateral attack" on its own water rights:

In this case, of the five surface water claims filed by the City of Pocatello, water right claims 29-00271, 29-00272, and 29-00273 have already been adjudicated with a state-law basis. . . . Although decrees issued in a prior adjudication are not conclusive as to the proof of existence of a water right, ***prior decrees are binding on the parties to the decree and their privies.*** *State v. Hagerman Water Right Owners*, 130 Idaho 736, 741-42, 947 P.2d 409, 414-15 (1997). . . . Accordingly, the City is bound by those prior decrees.

Licenses are and have been consistently treated in the SRBA the same as prior decrees for purposes of binding the parties and their privies. In *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, subcases 36-02708 *et al.* (Dec. 29, 1999), the SRBA Court

affirmed a special master's ruling that the SRBA was not the appropriate forum for collaterally attacking licenses previously issued through administration proceedings.

The SRBA cannot serve as a second opportunity for IDWR to recondition a licensed which it had a full opportunity to condition when the license was originally issued. *See e.g., Matter of Hidden Springs Trout Ranch, Inc. v. Allred*. Having determined that I.C. § 42-220 binds the state to licensed rights, *those same licenses are also binding on the license holder*. If a party is aggrieved by any aspect of a license that party's remedy is to seek an administrative review and then, if necessary, judicial review of the license.

* * *

Like a prior decree, a licensed right is not conclusive as to the extent of the water right, since a license does not insulate a claimant from practices occurring after the license was issued such as abandonment or forfeiture. However, unlike a prior decree, the binding effect of a license extends beyond the parties to the administrative proceeding and their privies. The Idaho legislature also acknowledged the binding effect of prior licenses and decrees in enacting Idaho Code § 42-1427 which provides a mechanism for defining elements of water rights not described in prior decrees or licenses. Accordingly, *the City is also bound by its prior license for water right claim 29-0431*.

The bottom line is that a party cannot have its water use adjudicated or administratively determined in one proceeding and then re-adjudicate the right under a more favorable legal theory in a subsequent proceeding.

Memorandum Decision and Order on Challenge and Order Disallowing Water Right Based on Federal Law at 12-13, subcase no. 29-11609 (October 6, 2006) (emphasis added).

Just as Pocatello cannot use the SRBA to transform its state decreed and licensed water rights into "federal reserved" water rights, the same goes for Pocatello's efforts to: 1) try and convert its Mink Creek surface water rights into groundwater rights (through an alternate point of diversion theory); and 2) try and convert its irrigation groundwater and wastewater rights into "municipal" water rights than could be used anywhere in its service area.³ If Pocatello seeks to

³ Pocatello did not challenge the point of diversion elements for water right claims #29-7118, #29-7119, and #29-07770. However, by challenging the licensed and recommended places of use for these water rights, Pocatello alleges that the "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law . . ." *See* Exs. K.1, K.2, and W. This language is inconsistent with the place of use identified in the water right licenses and could be interpreted to allow Pocatello to use water under those rights.

change the elements of its water rights the proper forum is IDWR and the proper method is an application for transfer pursuant to Idaho Code § 42-222. Idaho code section 42-222 states that “[a]ny person ... who shall desire to change the point of diversion ... or nature of use of all or part of the water, under the right *shall first make application to the department of water resources* for approval of such change.” (Emphasis added). Pocatello has refused to file proper transfer applications with IDWR, for reasons unknown to the Coalition, and instead insists on using the SRBA as a substitute. As described above, the law prohibits such tactics advanced by Pocatello.

Accordingly, the following objections to Pocatello’s prior decreed and licensed water rights should be dismissed as a matter of law:

#29-271, #29-272, #29-273

5. Point(s) of Diversion

Should be: Include all ground water points of diversion for the City of Pocatello’s municipal water rights.

#29-7118, #29-7119, #29-7431, #29-7770

7. Purpose(s) of Use

Should be: municipal, see also “Reasons supporting objections” below.

9. Place of Use

Should be: “Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, . . .”

Pocatello is bound by its prior representations to the Bannock County District Court in the *Smith Decree* proceedings and to IDWR in the licensing proceedings. Pocatello sought and received decreed and licensed irrigation rights with specific points of diversion and places of use.

anywhere in the service area. Since Pocatello did not object to the points of diversions for its irrigation groundwater rights, Pocatello would apparently have to pipe that water from the licensed points of diversion to other areas if it wanted to use the water on a place of use within its service area but which differed from the acres identified in the licenses.

Idaho law prohibits Pocatello from expanding the scope of those water rights by collaterally attacking its prior decrees and licenses in the SRBA. Moreover, it would be unprecedented for this Court to allow a claimant to change its previously decreed surface water source (i.e. Mink Creek) to groundwater (through an alternate point of diversion objection) and previously licensed "irrigation" water rights to municipal uses (through a purpose and place of use objection). The Court should grant the Coalition's motion for summary judgment and dismiss the above-referenced objections filed by Pocatello.

II. Pocatello Cannot Change its Prior Decreed Mink Creek Water Rights Through Objections in the SRBA.

In addition to the binding effect of prior decrees and licenses, Pocatello is similarly bound by its claims to the SRBA Court. Pocatello's claims for water rights #29-271, #29-272, and #29-273 were all filed on April 19, 1990. *See* Exs. B.1, B.2, and B.3 to *Thompson Aff.* On all three claims, Pocatello's mayor claimed, under oath, that the "diverting works" consisted of a "diversion dam, headgate and pipeline to system."⁴ Nowhere in any of the claims did Pocatello aver that its groundwater wells were "alternate" points of diversion for these surface water rights. Pocatello filed amended objections to all three claims in November 2003, alleging that the point of diversion included "all ground water points of diversion for the City of Pocatello's municipal water rights."

The SRBA Rules of Procedure (AO1) prohibit Pocatello's efforts to amend its claims by way of an objection. *See* Rule 4(d)(1)(b) ("A claimant **may not** amend a claim by filing an objection or a response") (emphasis in original). Since Pocatello did not claim the wells as a point of diversion when it filed claims for #29-271, #29-272, and #29-273 in 1990, and since Pocatello has failed to file any amended claims alleging a different point of diversion than what

⁴ The Notice of Claim for water right 42-272 also included "storage tanks" in the diverting works section.


was originally claimed (i.e. "diversion dam, headgate, and pipeline to system"), the point of diversion objections should be dismissed as a matter of law.

CONCLUSION

Pocatello's efforts to change its water rights through the SRBA are prohibited by Idaho law. For the foregoing reasons, this Court should dismiss Pocatello's point of diversion objections to its prior decreed water rights, claims #29-271, #29-272, and #29-273, and the purpose of use and place of use objections to its prior licensed water rights, claims #29-7118, #29-7119, #29-7431, and #29-7770.

Dated this 30th day of November, 2006.

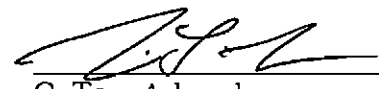
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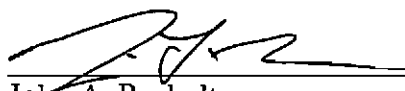
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2006, I served a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF SWC MOTION FOR SUMMARY JUDGMENT on the person(s) listed below, in the manner indicated:

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Boise, ID 83720-0098

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Attorneys for United States of America



Travis L. Thompson

EXHIBIT A

Subcase Nos.:

- 29-00271
- 29-00272
- 29-00273
- 29-07118
- 29-07119
- 29-07431
- 29-07770

3334

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District #2*

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Canal Company*

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Burley Irrigation District*

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Attorneys for Minidoka Irrigation District

2008 NOV 30 PM 3:41
FILED
TWIN FALLS CO., IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39567

) Subcase Nos.: (see attached Exhibit A)

)
)
) **AFFIDAVIT OF TRAVIS L. THOMPSON IN**
) **SUPPORT OF SWC MOTION FOR SUMMARY**
) **JUDGMENT**
)
)

STATE OF IDAHO)

County of Twin Falls)

) ss.

TRAVIS L. THOMPSON, being first duly sworn upon oath, deposes and hereby states as follows:

AFFIDAVIT OF TRAVIS L. THOMPSON IN SUPPORT OF SWC MOTION
FOR SUMMARY JUDGMENT

3335 1

1. I am an attorney representing Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge. All documents referenced below were retrieved from the Idaho Department of Water Resources, the SRBA Court, or from the exhibits attached to *Supplemental Director's Report Regarding City of Pocatello's Basin 29 State-Based Water Rights*.

2. Attached hereto as Exhibit A is a true and correct copy of the decree entered by the Bannock County District Court in *Sam B. Smith v. City of Pocatello* on June 5, 1926.

3. Attached hereto as Exhibits B.1, B.2, and B.3 are true and correct copies of the notices of claim for water rights #29-271, #29-272, and #29-273.

4. Attached hereto as Exhibits C.1, C.2, and C.3 are true and correct copies of the Director's recommendations to the SRBA Court for water rights #29-271, #29-272, and #29-273.

4. Attached hereto as Exhibits D.1, D.2, and D.3 are true and correct copies of the November 14, 2003 objections to water rights #29-271, #29-272, and #29-273 filed by the City of Pocatello.

5. Attached hereto as Exhibits E.1, E.2, and E.3 are true and correct copies of the November 18, 2003 amended objections to water rights #29-271, #29-272, and #29-273 filed by the City of Pocatello.

6. Attached here to as Exhibits F.1 and F.2 are true and correct copies of the water right licenses issued for water rights #29-7118 and #29-7119.

7. Attached hereto as Exhibits G.1 and G.2 are true and correct copies of the notices of claim for water rights #29-7118 and #29-7119.

8. Attached hereto as Exhibit H is a true and correct copy of the amended notice of claim filed for water rights #29-7118 and #29-7119.

9. Attached hereto as Exhibits I.1 and I.2 are true and correct copies of the Director's recommendations to the SRBA Court for water rights #29-7118 and #29-7119.

10. Attached hereto as Exhibits J.1 and J.2 are true and correct copies of the November 14, 2003 objections to water rights #29-7118 and #29-7119 filed by the City of Pocatello.

11. Attached hereto as Exhibits K.1 and K.2 are true and correct copies of the November 18, 2003 amended objections to water rights #29-7118 and #29-7119 filed by the City of Pocatello.

12. Attached hereto as Exhibit L is a true and correct copy of the water right license issued for water right #29-7431.

13. Attached hereto as Exhibit M is a true and correct copy of the notice of claim filed for water right #29-7431.

14. Attached hereto as Exhibit N is a true and correct copy of the amended notice of claim filed for water right #29-7431.

15. Attached hereto as Exhibit O is a true and correct copy of the Director's recommendation to the SRBA Court for water right #29-7431.

16. Attached hereto as Exhibit P is a true and correct copy of the water right permit issued for water right #29-07770.

17. Attached hereto as Exhibit Q is a true and correct copy of the proof of beneficial use form filed by the City of Pocatello for water right #29-07770.

18. Attached hereto as Exhibit R is a true and correct copy of the notice of claim filed for water right #29-07770.

19. Attached hereto as Exhibit S is a true and correct copy of the water right report for water right #29-07770 as listed on IDWR's website, www.idwr.idaho.gov, along with true and correct copies of an October 28, 2005 letter from David Tuthill to Jo Beeman and a June 23, 2005 memorandum from Jeff Peppersack to David Tuthill which discuss the licensing of water right #29-07770.

20. Attached hereto as Exhibit T is a true and correct copy of the amended claim filed for water right #29-07770.

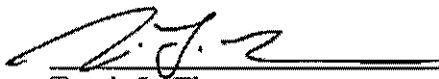
21. Attached hereto as Exhibit U is a true and correct copy of the Director's recommendation to the SRBA Court for water right #29-07770.

22. Attached hereto as Exhibit V is a true and correct copy of the November 14, 2003 objection to water right #29-07770 filed by the City of Pocatello.

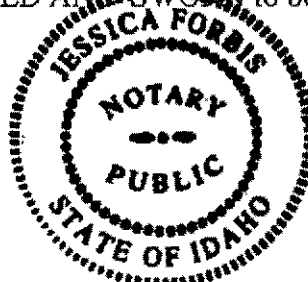
23. Attached hereto as Exhibit W is a true and correct copy of the November 18, 2003 amended objection to water right #29-07770 filed by the City of Pocatello.


Further you affiant sayeth nought.

DATED this 30th day of November, 2006.


Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 30th day of November, 2006.




Notary Public for State of Idaho
Residing at Twin Falls, Idaho.
Commission Expires: 4/3/12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November, 2006, I served the foregoing AFFIDAVIT OF TRAVIS L. THOMPSON IN SUPPORT OF SWC MOTION FOR SUMMARY JUDGMENT upon the following:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Josephine P. Beeman
Beeman & Associates, P.C.
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Boise, ID 83702

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☐ Email

Attorneys for United States of America


Travis L. Thompson

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-07118
29-07119
29-07431
29-07770

Exhibit A

Water Rights

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IOWA, IN AND
FOR THE COUNTY OF BAWKCO.

Wm. S. Smith, Administrator of the
Estate of T. S. Smith, deceased,
Hickory Livestock and Farm Company,
a corporation, JOSEPH ALLEN and WILLIAM
H. EDWARDS,

Plaintiffs,

-vs-

CITY OF POCAHONTO, a municipal
corporation, ARTHUR DAY, J. L.
McKINNON, H. F. GALLOWAY, JAMES A.
STANDRON, JOHN PATTERSON and JOHN
EDWARDS,

Defendants.

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June 5, 1926.

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This cause came on regularly for trial on the third day
of June, 1926, before the court sitting without a jury, a jury having
expressly waived by the respective parties; Messrs. McLaughlin,
McLaughlin & McLaughlin appeared for the plaintiffs, Messrs. J. S.
Standron and James Bacon appeared for the defendants and cross-com-
plainants, J. S. Campbell and J. L. McKinnon, Messrs. Peterson and
Offin appeared for Arthur Day and H. F. Galloway and no one appeared
for John Patterson and John Edwards, and their default was duly entered
and Jones, Pomeroy & Jones appeared for the defendant and cross-com-
plainant, the City of Pocahonto.

Thereupon witnesses were sworn and testified on behalf
of the plaintiff and the several defendants and cross-complainants
herein, and documentary evidence was offered and received by and on
behalf of the respective parties and the testimony closed. Argument
was submitted by the respective counsel on behalf of said parties and
the cause was finally submitted to the court for decision and the court
having duly considered the testimony, the argument of the counsel, and
being fully advised in the premises, has made its finding of fact and
conclusions of law and ordered judgment to be entered in accordance there-
with.

That in the year 1917 or 1918, the cross-complainant, the
City of Pocahonto, purchased the land of land from certain United
Indians who were occupying, improving and cultivating their said lands

to the extent of 181.1 acres at the time of the sale; and that on October 1st, 1901, the predecessors of the City of Pocatello constructed a pipe line which diverted water from Mink Creek to the City of Pocatello for municipal purposes to the extent of 26 inches (.58 Co. feet);

That on September 1st, 1917, the City of Pocatello increased the size of the pipe line to a carrying capacity of 5 cubic feet per second of time and since said time has diverted said amount from the waters of Mink Creek for municipal purposes.

That on June 17th, 1902, the cross-complainant, James S. Campbell, appropriated and diverted 70 inches of the waters of Mink Creek and Campbell Creek and has used the same since said date.

That on September 7th, 1904, Arthur Say appropriated and diverted 75 inches of the waters of Mink Creek and used the same for irrigation purposes since said date.

That on August 20th, 1907, the predecessors of H. F. Galloway appropriated and diverted 20 inches of the waters of Mink Creek and has since used the same for irrigation purposes.

That on July 5th, 1910, J. A. McKinnon appropriated and diverted 10 inches of the waters of Mink Creek and has since used the same for irrigation purposes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED; that the following named persons and corporations, defendants and cross-complainants in this action have the right to the use of said Mink Creek and the tributaries thereof, and springs, the sources of said tributaries, such amount and amounts of water, of the date of appropriation and priority, and for the uses and purposes and the point of diversion and means of diversion as set forth in the following schedule:

MINK CREEK

<u>Name of Claimant and</u> <u>Date of Priority</u>	<u>Amount in</u> <u>Second Feet</u>	<u>Point of Diversion</u> <u>And Place of Use</u>
1. Estate of T. B. Smith deceased; 1869--February 28,	10 inches	Said water to be diverted from the said creek by means of a dam in said creek at or near the center of section 20, Twp. 7, South Range 25, E.D.N. Said water to be used on the following described lands: Northeast Quarter of Section seventeen and Northwest Quarter of Southwest Quarter of Section 17, and Southwest Quarter of Southwest Quarter of Section 8, Twp. 7, South Range 25, E.D.N.
1902--July 21	44.65 inches	

1926/1

WINK CREEK

Name of Claimant and Date of Priority	Amount in Second feet	Point of Diversion and Place of Use
2. Elkhorn Livestock and Dairy Company, a corporation. 1868-February 16	16 inches	Said water to be diverted by means of a dam across said Wink Creek at or near the center of Section 20, Twp. 7, South Range 35, E.B.M. Said water to be used upon the following described lands: Southeast quarter of the Northeast quarter, and the East one-half of the Southwest quarter of Section 17, Twp. 7, South Range 35, E.B.M. <i>City of Pocatello to the City of Pocatello</i>
1902-July 21	47.22 inches	
3. Joseph Sims		
1860-February 16	8 inches	Said water to be diverted by means of a dam across said Wink Creek at or near the center of Section 20, Twp. 7, South Range 35, E.B.M. Said water to be used upon the following described lands: Southeast quarter of the Northeast quarter of Section 16, and the East eighteen acres of the Southeast quarter of the Northeast quarter of Section 17, Twp. 7, South Range 35, E.B.M.
1902-July 21	16.26 inches	
4. William H. Edwards		
1869-February 16	20 inches	Said water to be diverted by means of a dam across Wink Creek at or near the center of section 20, Twp. 7, South Range 35, E.B.M. Said water to be used upon the following described lands: Northeast quarter of the Northeast quarter of section 16, Twp. 7, South Range 35, E.B.M.
1902-July 21	71.52 inches	
5. City of Pocatello		
1869-February 28	161.1 inches	Said water to be diverted by means of a dam and head gate into a pipe line at a point 50 58' East 728.5 feet from the West quarter corner of section 16, Twp. 8, South Range 34, E.B.M. To be used for municipal purposes within the City of Pocatello, Blaine County, State of Idaho.
1901-October 1	28 inches	
1917-October 1	69.9 inches	
6. James F. Campbell		
1902-June 17	70 inches (from Wink Creek and Campbell Creek, the amount which he shall receive from Campbell Creek to be deducted from the 70 in. and the balance from Wink)	Said water to be diverted near the Southeast corner of the Northeast quarter of the Northeast quarter of section 31, Twp. 7, South Range 35, E.B.M. Said water to be used upon the lands described as follows: Southeast quarter of the Northeast quarter, East half of the Southeast quarter of section 30, Northeast quarter of section 31, all in Twp. 7, South Range 35, E.B.M.
7. Arthur Gay		
1904-September 7	73 inches	Said water to be diverted by means of a dam and head gate in the Southeast quarter of the Southeast quarter of Section 23, Twp. 7 South Range 35 E.B.M. Said water to be used upon the lands described as follows: The Southeast quarter of the Southeast quarter of Section 19, the Northeast quarter of the Northeast quarter of section 20, the Northeast quarter of the Northeast quarter of section 28, the Southeast quarter of the Southwest quarter of section 20, Twp. 7, South Range 35, E.B.M.

S. E. F. Galloway

1907- August 7

20 inches

Said water to be diverted from the said creek in the Southwest quarter of section 20, Twp. 7, South Range 35, L.B.L. Said water to be used upon the lands described as follows: Northeast quarter of the Southwest quarter, the Northeast quarter of the Southeast quarter of Section 20, Twp. 7, South Range 35, L.B.L.

O. J. R. McManon

1910- July 10

12 inches

Said water to be diverted from the said creek through the ditch of James G. Campbell at a point near the Southeast corner of the Northeast quarter of the Northeast quarter of section 21, Twp. 7, South Range 35, L.B.L. Said water to be used upon the lands described as follows: South half of the Northeast quarter, the southeast quarter of the Northeast quarter and the Northeast quarter of the Southeast quarter of Section 21, Twp. 7, South Range 35, L.B.L.

IT IS FURTHER DECREED that the parties hereto shall permit sufficient water to flow through their respective headgates during the irrigation season to furnish 58.71 inches to Big Elk Allotment, and 27.46 to the Toane Allotment, with a priority of February 28, 1889, and an additional inch of water for each additional acre added to the present irrigated area while the same is in Indian ownership, which area at the date hereof is 97.17 acres.

The above provision regarding said Indian Lands is made to avoid litigation with said Indians and to enjoin each of the parties hereto from preventing the said amount of water from flowing to said allotments while the same are in Indian ownership. Provided, however, in the event litigation shall be initiated to decree said Indian rights the provision herein regarding the same shall not be constructed as any waiver of the right of the parties hereto to question the amount, extent, or priority of the use of the waters to which said Indian allotments are entitled, and shall not bar or ectop or limit the parties hereto from urging any matter that could have been raised had said provision not been included in this decree.

No costs or disbursements are allowed to any of the parties to this action, but each shall pay his, her or its own costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: that since the natural flow of the streams, the water of which is awarded by this decree, is not sufficient to furnish all parties claiming water therefrom with the full amount of water awarded to them, then such water shall be distributed in accordance with the priorities as hereinbefore decreed, and if the water is insufficient to furnish all rights which are of equal dignity, then the available supply of water shall be distributed pro rata among such rights.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: that the Irrigation Season mentioned in this judgment shall be that portion of the calendar year beginning on the 15th day of April and closing on the 15th day of Sept-

ember, being a total of five months, or 152 days; that the term Acre Foot, as used in this judgment, means and shall mean, 43,560 cubic feet of water, or the amount necessary to cover an acre of land one foot in depth;

That the inches referred to in this judgment is such an amount of water which will pass through an orifice one inch square under a four-inch pressure, each second of time, being 1-100 part of a cubic foot per second;

That the term cubic foot per second as used in this judgment, is and shall be one cubic foot of water passing an orifice, the cross-section per second of time.

That all water awarded by this judgment shall be measured at the point of diversion, except where conditions make it impossible so to do. Where it is so impossible, measuring devices or measuring stations shall be located at the nearest feasible point below said point of diversion;

That all canals or pipe lines diverting in excess of 10 cubic feet of water per second, must install a standard type of current meter to be passed upon by the Commissioner of Agriculture and subject to review by this court;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the water appropriated shall be entitled to the benefit of the return flow into the river and its tributaries, as against, prior, lower, or prior and lower appropriators, in computing the amount of water herein awarded to said prior, lower or said prior and lower appropriators.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That the water hereby awarded has been applied to a beneficial use and that the parties to said action are the owners of the lands, reservoirs, canals and ditches, and ditches, which by the terms of this judgment are referred to respectively as the lands upon which the water awarded to them has been used by means of said canals, ditches, reservoirs and other works.

That all rights herein awarded to the plaintiff and several defendants and cross-complainants, are for the beneficial uses specified, and none of the parties hereto, or their successors in interest, whether heirs, executors, administrators, successors or assigns shall have the right to divert any of the waters of the said Sink Creek, its tributaries and sources, except for beneficial use, and whenever such use has ceased, such party or parties shall cease to divert, and shall have no right to divert, the said waters, or any part thereof, and each and every of the parties hereto, their servants, attorneys, employees and successors in interest as aforesaid, are hereby enjoined and re-

trained from any and all interference with or diversion or use of the said waters, except in the manner, and to the extent, and for the purposes provided in this judgment, whenever such interference, diversion or use would in any manner interfere with the diversion or use of the water decreed by this judgment to any of the other parties to this action;

That the parties hereto and their successors in interest shall install and maintain suitable and efficient designated, controlling works and measuring devices at their respective points of diversion, and all water herein allotted and decreed shall be measured at said points of diversion. Said works and devices shall be built and installed in accordance with plans and specifications to be approved by the state official charged with the duty of supervising the distribution of water, (subject to review by this Court). All such devices shall be of such design as to accurately register the amount of water so diverted, and in case of ditches diverting more than 50 cubic feet per second, automatic measuring and registering devices shall be installed and shall at all times be subject to the inspection of any party to this action, or to any public officials or water masters having jurisdiction over the distribution and diversion of water, and no dam or other obstruction to the natural flow of the stream shall be maintained so as to divert water from the channel of the stream, except through ditches, canals or other works, provided with such designated, control works and measuring devices, except as in this judgment provided; and each of the parties hereto shall be perpetually enjoined from diverting from the channel of the said Mink Creek, or its tributaries or sources, any water through any ditch, conduit, or other devices not provided with such designated, control works and measuring devices; provided, that in case of diversions through pipes for power purposes or otherwise, measuring devices may be dispensed with where the quantity of water diverted may be otherwise determined by other means of calculation.

That the City of Pocatello must install a Standard Weir and Stevens recording gage or other similar standard device or devices that they may be readily read and may be located so that it is at all times subject to the inspection of the water users of Mink Creek and so located that ingress and egress is permitted thereto and therefrom. And the said City of Pocatello is required to submit to the Court plans for such devices for the approval of the Court.

The rights herein decreed and required are designated and classified as (municipal purposes and irrigation rights). Irrigation rights are defined as the right to divert from Mink Creek waters for the irrigation of the lands described in the decree belonging to the parties to this action. Domestic rights for municipal purposes are defined to be the right to divert from the waters of Mink Creek water through a pipe line to the City of Pocatello to be used by

and distributed to the inhabitants of the said City of Peacerville for domestic purposes, irrigation of lawns, sprinkling of streets, fire and the purposes to which water is usually required by its inhabitants.

That no party to this decree shall divert more water than can be beneficially used, and that the waste of water is prohibited and enjoined.

That the retention of jurisdiction by the Court shall be for the following purposes and the following purposes only:

(a) To make corrections for clerical errors, inadvertences and omissions in the rights decreed.

(b) To review and amend the provisions of the decree fixing, if necessary, different limits upon the irrigating season as above described, and for reducing the amount of water which may be shown during actual operation of the creek and its tributaries, to be in excess of the amount actually necessary for the successful raising of crops.

(c) To define more accurately, if necessary, the diversions of the water to the several users mentioned within the decree, with special reference to stipulated rights when one user secures the total amount, through several ditches enumerated opposite his name with no data submitted or available with reference to the capacity of the ditches supplying said lands of the user.

(d) To observe for a season or longer if necessary the operation of the creek in order that such additional provisions may be added to this decree to facilitate such operation in the field, but jurisdiction is not retained to operate the creek, under order of Court.

(e) Until the measuring devices and all diversions are installed and operating to the satisfaction of the Court, and the parties hereto are given sixty (60) days in which to install the same,

Done in open Court this the 5th day of June, A. D. 1913.

C. R. BAKER
DISTRICT JUDGE

Exhibit B - 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-00271
Date Received: 3/28/1990 4/19/90
Receipt No: Coll 458
Received By: AW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCA TELLO
Address: P.O. BOX 4169
POCA TELLO, ID 83205
2. Date of Priority: FEB 26, 1869
3. Source: MINK CREEK Trib. to: PORTNEUF RIVER
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
08S	34E	13	NE	SE			BANNOCK

5. Description of diverting works:
DIVERSION DAM, HEADGATE, PIPELINE TO SYSTEM.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
MUNICIPAL	01/01	12/31	3.220		

7. Total Quantity Appropriated is:
3.220 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
M/CITY OF POCA TELLO

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
----------	-------	---------	--------	-----	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? NO

A29-00271

Page 1

Date: 04/16/90

ENCROFLED

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13. Other Water Rights used:
SEE ATTACHMENT

14. Remarks:

P/U IS CITY OF POCA TELLO AND VICINITY, LOCATED IN BANNOCK AND
POWER COUNTIES.
SEE ATTACHMENT FOR ADDITIONAL REMARKS.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

SMITH ADMIN., ET. AL.
Decree Plaintiff

vs CITY OF POCA TELLO, ET. AL.
Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and
understand the form entitled "How you will receive notice in the Snake River
Basin Adjudication." (b.) I/We do do not wish to receive and pay
a small annual fee for monthly copies of the docket sheet.

Number of attachments:

For Organizations:

I do solemnly swear or affirm that I am MAYOR of

Title

CITY OF POCA TELLO

Organization

, that I have signed the foregoing
document in the space below as MAYOR of

Title

CITY OF POCA TELLO

Organization

and that the statements contained in the
foregoing document are true and correct.

Peter Engstedt
Signature of Authorized Agent

MAYOR / CITY OF POCA TELLO
Title and Organization

4-17-90

Date

State of Idaho

County of Bannock

SS.

Subscribed and sworn (or affirmed) before me this 18th day

of April 19 90

Connie Lee Blackburn
Notary Public

Seal

Residing at Pocatello

My Commission Expires 8-18-91

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Costello will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Patrick D. Costello

Address 775 N. 8th Boise, ID 83702

Date 4/16/90

Exhibit B - 2

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-00272
Date Received: 3/28/1990 4/19/90
Receipt No: 0016458
Received By: RAF

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCA TELLO
Address: P.O. BOX 4169
POCA TELLO, ID 83205
2. Date of Priority: OCT 01, 1901
3. Source: MINK CREEK Trib. to: PORTNEUF RIVER
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
08S	34E	13	NE	SE			BANNOCK

5. Description of diverting works:
DIVERSION DAM, HEADGATE, PIPELINE TO RESERVOIR, STORAGE TANKS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
MUNICIPAL	01/01	12/31	0.560		

7. Total Quantity Appropriated is:
0.560 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
M/CITY OF POCA TELLO

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
----------	-------	---------	--------	-----	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? NO

A29-00272

Page 1

Date: 04/16/90

RECORDED

NOV 13 1992

3354

14. Remarks:

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

SMITH ADMIN., ET. AL.

Decree Plaintiff

VS

CITY OF POCA TELLO, ET. AL.

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments:

For Organizations:

I do solemnly swear or affirm that I am MAYOR of _____
Title

CITY OF BOCATTELLO

Organization

document in the space below as MAYOR of

MAYOR

of

Title

CITY OF POCA TELLO

Organization

CITY OF POCAHELLO and that the statements contained in the
Organization
foregoing document are true and correct. *Peter Christensen*

Signature of Authorized Agent

MAYOR / CITY OF BOZATELLO

Title and Organization	Date	Remarks
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

4-17-90

Date _____

State of Idaho

County of

Banrock

) SS.
)

Subscribed and sworn (or affirmed) before me this 18th day

of April 19 90

Connie Lee Blackburn
Notary Public

Seal

Residing at

Locatello

My Commission Expires

8-18-91

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Costello will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature

[Signature]

Address

775 n. 8th Boise, ID 83702

Date

4/16/90

Exhibit B - 3

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-00273
Date Received: 3/28/1990 4/19/90
Receipt No: C016458
Received By: JAW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCA TELLO
Address: P.O. BOX 4169
POCA TELLO, ID 83205
2. Date of Priority: OCT 01, 1917
3. Source: MINK CREEK Trib. to: PORTNEUF RIVER
4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
08S	34E	13	NE SE		BANNOCK

5. Description of diverting works:
DIVERSION DAM, HEADGATE, PIPELINE TO SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
MUNICIPAL	01/01	12/31	1.218		

7. Total Quantity Appropriated is:
1.218 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
M/CITY OF POCA TELLO

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
----------	-------	---------	------------	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? NO

A29-00273

Page 1

Date: 04/16/90

RECORDED

NOV 13 1992

3358

13. Other Water Rights Used:
SEE ATTACHMENT

14. Remarks:

P/U CITY OF POCA TELLO AND VICINITY, LOCATED IN BANNOCK AND POWER
COUNTIES.
FOR ADDITIONAL REMARKS, SEE ATTACHMENT.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

SMITH ADMIN., ET. AL.
Decree Plaintiff

vs

CITY OF POCA TELLO, ET. AL.
Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and
understand the form entitled "How you will receive notice in the Snake River
Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay
a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am MAYOR Title _____ of _____

CITY OF POCA TELLO Organization, that I have signed the foregoing
document in the space below as MAYOR Title _____ of _____

CITY OF POCA TELLO Organization and that the statements contained in the
foregoing document are true and correct.

Peter Christoff
Signature of Authorized Agent

MAYOR / CITY OF POCA TELLO
Title and Organization

4-17-90
Date

State of Idaho)

County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 18th day

of April 19 90

Donnie Lee Blackburn
Notary Public

Seal

Residing at Pocatello

My Commission Expires 8-18-91

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Costello will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature [Signature]

Address 775 N. 8th Boise, ID 83702

Date 4/16/90

Exhibit C - 1

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-271

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: MINK CREEK

TRIBUTARY: PORTNEUF RIVER

QUANTITY: 3.220 CFS

PRIORITY DATE: 02/26/1869

POINT OF
DIVERSION: T08S R34E S13 NESE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
MUNICIPAL

PERIOD OF USE
1/01 12/31

QUANTITY
3.220 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Exhibit C - 2

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-272

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: MINK CREEK

TRIBUTARY: PORTNEUF RIVER

QUANTITY: 0.560 CFS

PRIORITY DATE: 10/01/1901

POINT OF
DIVERSION: T08S R34E S13 NESE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
MUNICIPAL

PERIOD OF USE
1/01 12/31

QUANTITY
0.560 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

3264

Exhibit C - 3

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-273
NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: MINK CREEK

TRIBUTARY: PORTNEUF RIVER

QUANTITY: 1.218 CFS

PRIORITY DATE: 10/01/1917

POINT OF
DIVERSION: T08S R34E S13 NESE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

MUNICIPAL

PERIOD OF USE

1/01 12/31

QUANTITY

1.218 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

3366

Exhibit D - 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. <u>See Attachment A</u>
	)	(All 38 of City of Pocatello's
	)	basin 29 water rights)
Case No. 39576)	
	)	STANDARD FORM 1
	)	OBJECTION
_____)	

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:
Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See "Reasons supporting objections" below.
3. ☒ **Quantity**
Should be: See "Reasons supporting objections" below.
4. ☒ **Priority Date**
Should be: See "Reasons supporting objections" below.
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: See "Reasons supporting objections" below.
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
11. I object because:
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

All 38 of the City of Pocatello's basin 29 water rights should include the following remark regarding the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

All 38 of the City of Pocatello's basin 29 water rights should be decreed with the following general provisions:

Separate Streams:

For purposes of water distribution in the Portneuf River drainage basin, water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Portneuf River, and will be administered separately from all other water rights in Basin 29:

Mink Creek

Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

Separate Administration: The City's 38 water rights, including water right no. and source, should be decreed with the following general provisions:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Basin 29 in accordance with the prior appropriation doctrine as established by Idaho law:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Swan Falls: This objection is parallel to the Swan Falls objections in Basin 37 (Consolidated Subcase No. 37-02499). Because the Swan Falls objections in Basin 37 have not been designated a basin-wide issue, this objection addresses the Swan Fall protections for water rights in Basin 29.

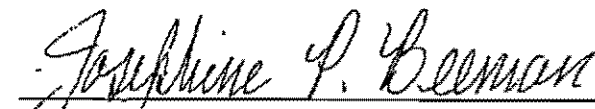
No decree entered in the SRBA will supercede, preempt, modify, terminate, extend or otherwise affect the legal force and effect of the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract (so long as the Agreement and Contract remain in effect), Consent Judgments in *Idaho Power Co. v. State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990)* and *Idaho Power Co. v. State of Idaho, Case No. 62237 (Fourth Judicial Dist. Mar. 9, 1990)*, and the 1982 State Water Plan (as amended in 1985).

VERIFICATION

State of Idaho)
)ss.
County of Ada)

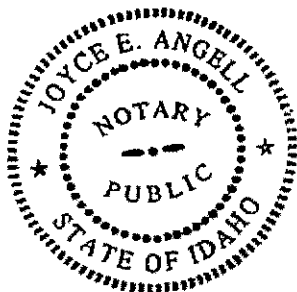
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

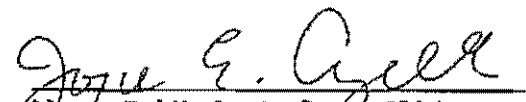
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

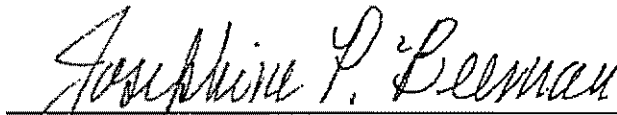
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Exhibit D - 2

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. Attachment A
(surface water rights)

Case No. 39576

STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☒ **Point(s) of Diversion**
Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):


The City of Pocatello's municipal wells derive their supply from the Lower Portneuf River Valley Aquifer that underlies the Portneuf River as it flows through the City of Pocatello. Mink Creek and Gibson Jack Creek are connected to the Lower Portneuf River Valley Aquifer upstream of the City of Pocatello's municipal wells. Due to this interconnection, these municipal wells divert these surface water priorities as they are legally and physically available. Leave will be sought from the court to amend the notice of claim for this water right to properly reflect the elements as set forth above.

VERIFICATION

State of Idaho)
)ss.
County of Ada)

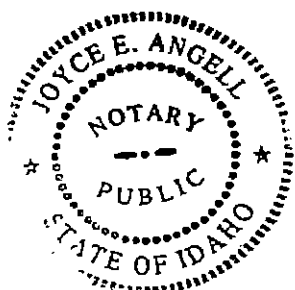
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

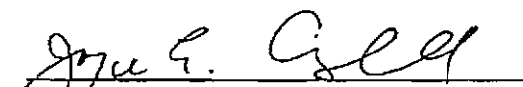
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

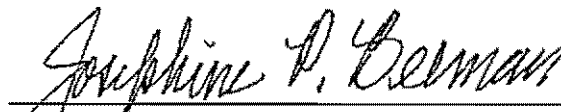
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Exhibit D - 3

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. <u>Attachment A</u>
	)	(37 of City of Pocatello's water rights,
	)	excluding the wastewater right)
Case No. 39576)	
	)	STANDARD FORM 1
	)	OBJECTION
_____)	

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right."

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):


Place of use: Beneficial use of a municipal water right includes all actions necessary to comply with public health and safety standards. The City of Pocatello's municipal service area includes all lands necessary to complete the beneficial use of the municipal water right.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

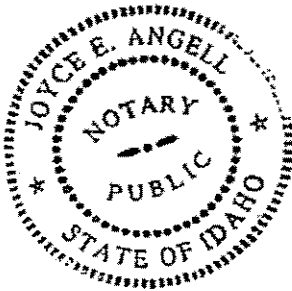
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

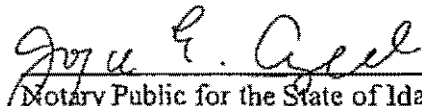
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

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2. One copy to the claimant of the water right at the following address:

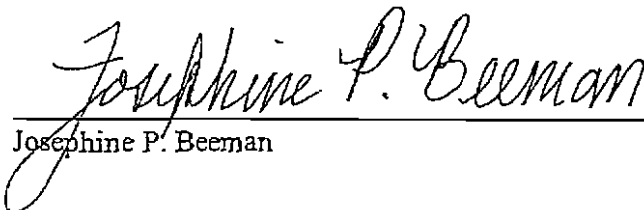
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Exhibit E - 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. 29-271

Case No. 39576

AMENDED
STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See "Reasons supporting objections" below.
3. ☒ **Quantity**
Should be: See "Reasons supporting objections" below.
4. ☒ **Priority Date**
Should be: See "Reasons supporting objections" below.
5. ☒ **Point(s) of Diversion**
Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights.
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: See "Reasons supporting objections" below.
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right."

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

1. Source, quantity, priority date and purpose of use (remark, general provision): All 38 of the City of Pocatello's basin 29 state-law water rights should include the following remark regarding the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage

facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

All 38 of the City of Pocatello's basin 29 state-law water rights should be decreed with the following general provisions:

Separate Streams:

For purposes of water distribution in the Portneuf River drainage basin, water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Portneuf River, and will be administered separately from all other water rights in Basin 29:

Mink Creek

Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

Separate Administration: All 38 of the City of Pocatello's basin 29 state-law water rights, including water right no. and source, should be decreed with the following general provisions:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Basin 29 in accordance with the prior appropriation doctrine as established by Idaho law:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Swan Falls: This objection is parallel to the Swan Falls objections in Basin 37 (Consolidated Subcase No. 37-02499). Because the Swan Falls objections in Basin 37 have not been designated a basin-wide issue, this objection addresses the Swan Fall protections for water rights in Basin 29.

No decree entered in the SRBA will supercede, preempt, modify, terminate, extend or otherwise affect the legal force and effect of the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract (so long as the Agreement and Contract remain in effect), Consent Judgments in *Idaho Power Co. v. State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990)* and *Idaho Power Co. v. State of Idaho, Case No. 62237 (Fourth Judicial Dist. Mar. 9, 1990)*, and the 1982 State Water Plan (as amended in 1985).

2. Place of use: Beneficial use of a municipal water right includes all actions necessary to comply with public health and safety standards. The City of Pocatello's municipal service area includes all lands necessary to complete the beneficial use of the municipal water right.

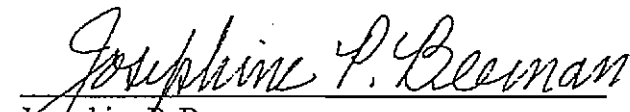
3. Point of diversion: The City of Pocatello's municipal wells derive their supply from the Lower Portneuf River Valley Aquifer that underlies the Portneuf River as it flows through the City of Pocatello. Mink Creek and Gibson Jack Creek are connected to the Lower Portneuf River Valley Aquifer upstream of the City of Pocatello's municipal wells. Due to this interconnection, these municipal wells divert these surface water priorities as they are legally and physically available. Leave will be sought from the court to amend the notice of claim for this water right to properly reflect the elements as set forth above.

VERIFICATION

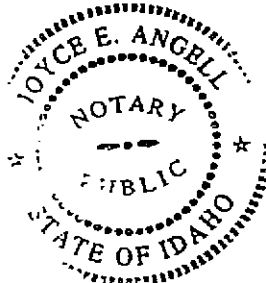
State of Idaho)
) ss.
County of Ada)

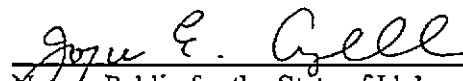
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 18, 2003




Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 18, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

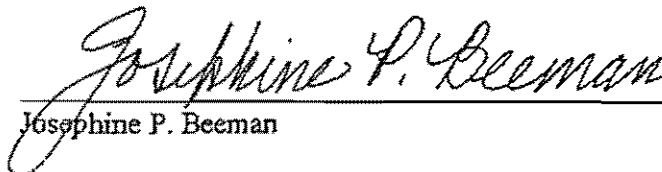
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Address: P. O. Box 4169
Pocatello, ID 83201

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IDWR Document Depository
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Chief, Natural Resources Division
Office of the Attorney General
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P. O. Box 44449
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550 West Fort Street, MSC 033
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Josephine P. Beeman

Exhibit E - 2

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. 29-272

Case No. 39576

AMENDED
STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See "Reasons supporting objections" below.
3. ☒ **Quantity**
Should be: See "Reasons supporting objections" below.
4. ☒ **Priority Date**
Should be: See "Reasons supporting objections" below.
5. ☒ **Point(s) of Diversion**
Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights.
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: See "Reasons supporting objections" below.
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right."

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

1. Source, quantity, priority date and purpose of use (remark, general provision): All 38 of the City of Pocatello's basin 29 state-law water rights should include the following remark regarding the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage

facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

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Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

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2. Place of use: Beneficial use of a municipal water right includes all actions necessary to comply with public health and safety standards. The City of Pocatello's municipal service area includes all lands necessary to complete the beneficial use of the municipal water right.

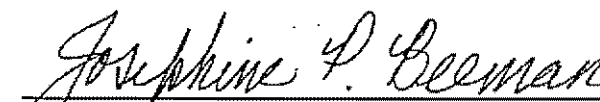
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VERIFICATION

State of Idaho)
) ss.
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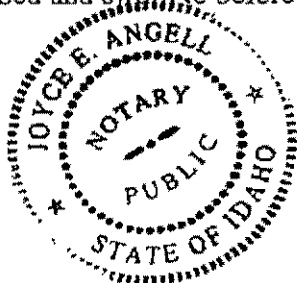
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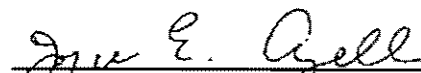
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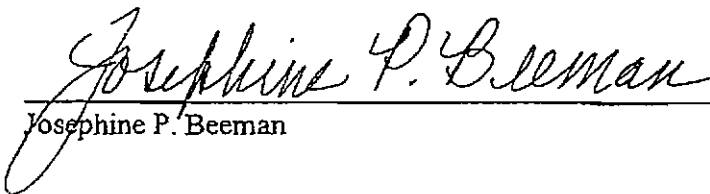
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Josephine P. Beeman

Exhibit E - 3

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

Subcase No. 29-273

Case No. 39576)

AMENDED
STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
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6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: See "Reasons supporting objections" below.
8. ☐ **Period of Year**
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9. ☒ **Place of Use**
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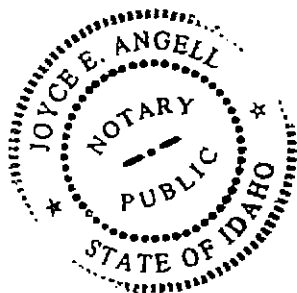
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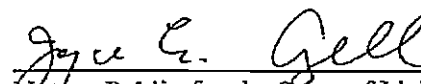
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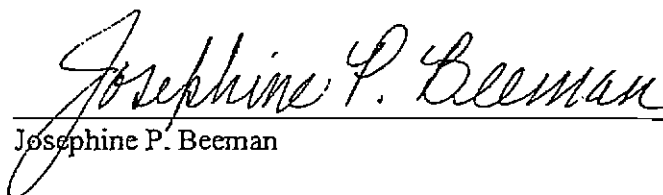
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United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Exhibit

F - 1

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 29-7118 Priority April 11, 1973 Amount 4.01 cfs

THIS IS TO CERTIFY, that CITY OF POCA TELLO

of Pocatello, Idaho, has complied with the terms and conditions of Permit No. 29-7118 issued pursuant to Application for Permit dated April 11, 1973, and has submitted proof to the Department of Water Resources on May 29, 1974, that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity for the diversion of 4.01 cfs of water from a ground water source, tributary to _____, and that the permit holder has applied to a beneficial use and established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u>	from <u>April 1</u> to <u>NOV. 1</u> at <u>4.01 cfs</u> and <u>975 acre feet or 3.5 af per acre</u>		
	from _____ at _____ cfs and _____		
	from _____ at _____ cfs and _____		

Subject, however, to the condition that no more than 4.01 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and appurtenant is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed 975 acre feet per year, said waters to be diverted within the NW 1/4 SW 1/4 of Sec. 16,

Twp. 6 S, Rge. 33 E, B. M. in the County of Power

Description and location of place of use:

Twp.	Range	Sec.	NE 1/4				NW 1/4				SW 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	33E	16							40	32	32	40			184
		17												30	94
		20	0.5												0.5

Total number of acres irrigated 278.5

A measuring device of a type approved by the Department shall be permanently maintained as part of the diverting works.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 7 day of January, 19 75.

Director

MICROFILMED

3405

Exhibit F - 2

WATER RIGHT LICENSE

THIS IS TO CERTIFY, that CITY OF POCA TELLO

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u>	from <u>April 1</u> to <u>Nov. 1</u>	at <u>6.0</u> cfs and	<u>1,050 acre feet or</u>
	from _____ to _____	_____ cfs and	<u>3.5 af per acre</u>
	from _____ to _____	_____ cfs and	

Description and location of place of use:

[illegible]

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 7 day of
January 19 75

DIRETOR

Exhibit G - 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-07118
Date Received: 3/28/1990 4/14/90
Receipt No: C010458
Received By: RAJ

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCA TELLO
Address: P.O. BOX 4169
POCA TELLO, ID 83205
2. Date of Priority: APR 11, 1973
3. Source: GROUNDWATER Trib. to:
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	33E	16	NW	SW			POWER

5. Description of diverting works:
WELL (AIRPORT), PUMP & PIPELINE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	4.010		975.00

7. Total Quantity Appropriated is:
4.010 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 697.5 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	33E	16	SW	NW		IRR	40.0
			SE	NW		IRR	32.0
			NE	SW		IRR	32.0
			NW	SW		IRR	40.0

A29-07118

Page 1

Date: 04/16/90

MICROFILMED

NOV 13 1992
3409



10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	33E	16	SW	SW		IRR	28.0
			SE	SW		IRR	12.0
					Section Acres		184.0
		17	SE	NE		IRR	32.0
			NE	SE		IRR	32.0
			SE	SE		IRR	30.0
					Section Acres		94.0
		20	NE	NE		IRR	1.0
					Section Acres		1.0
					Total Acres		279.0

11. Place of use in counties: POWER

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:
AC. IRR.=278.5.
P/U WITHIN CITY LIMITS OF POCA TELLO.

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am MAYOR of _____ Title

CITY OF POCA TELLO, that I have signed the foregoing Organization

document in the space below as MAYOR of _____ Title

CITY OF POCA TELLO and that the statements contained in the Organization
foregoing document are true and correct.

[Signature]
Signature of Authorized Agent

MAYOR / CITY OF POCA TELLO
Title and Organization

4-17-90
Date

State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 18th day

of April 19 90

[Signature]
Notary Public

Seal

Residing at Pocatello

My Commission Expires 8-18-91

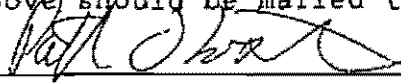
17. Notice of Appearance

Notice is hereby given that I, _____ will be

Print Name

acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature



Address

775 N. 8th Boise, ID 83702

Date

4/16/90

Exhibit G - 2

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-07119
Date Received: 3/28/1990 4/1/90
Receipt No: C016458
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCATELLO
Address: P.O. BOX 4169
POCATELLO, ID 83205

2. Date of Priority: APR 11, 1973

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
06S	33E	9	SW	SW	SW		POWER

5. Description of diverting works:
WELL (AIRPORT), PUMP AND PIPE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	6.000		1050.00

7. Total Quantity Appropriated is:
6.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 750.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
06S	33E	9	NE	NW		IRR	2.0
			NW	NW		IRR	2.0
			SW	NW		IRR	40.0
			SE	NW		IRR	34.0

A29-07119

Page 1

Date: 04/16/90

MICROFILMED

NOV 13 1992

3414



10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
06S	33E	9	NE		SW		IRR	34.0
			NW		SW		IRR	40.0
			SW		SW		IRR	40.0
			SE		SW		IRR	34.0
							Section Acres	226.0
		16	NE		NW		IRR	34.0
			NW		NW		IRR	40.0
							Section Acres	74.0
							Total Acres	300.0

11. Place of use in counties: POWER

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am MAYOR of _____ Title

CITY OF POCA TELLO, that I have signed the foregoing
Organization
document in the space below as MAYOR of

CITY OF POCA TELLO and that the statements contained in the
Organization
foregoing document are true and correct.

Peter Angstedt
Signature of Authorized Agent

MAYOR / CITY OF POCA TELLO
Title and Organization

4-17-90
Date

State of Idaho)
County of Lannock) SS.

Subscribed and sworn (or affirmed) before me this 18th day
of April 19 90

Connie Lee Blackburn
Notary Public

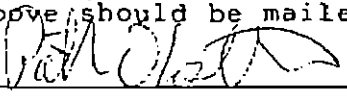
Seal

Residing at Pocatello

My Commission Expires 8-18-91

17. Notice of Appearance

Notice is hereby given that I, Patrick D. Castello will be
Print Name
acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature 

Address

775 N. 8th Boise, ID 83702

Date

4/16/90

Exhibit H

RECEIVED

APR 25 2003

Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 29-7118 + 29-7119
Date Received:
Receipt No:
Received By:

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF POCA TELLO Phone: (208)232-4311

PO BOX 4169
POCA TELLO ID USA 83201

2. Date of Priority: April 11, 1973

3. Source: GROUND WATER

4. Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County Type

SEE ATTACHMENT A

5. Description of diverting works:

32 WELLS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MUNICIPAL	1/01	12/31	10.01	

7. Total Quantity Appropriated is:
10.01 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses: MUNICIPAL, CITY OF POCA TELLO

10. Place of use: WITHIN THE SERVICE AREA OF THE CITY OF POCA TELLO'S MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW.

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
----------	-------	---------	------------	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used: [LIST/ATTACH CITY'S MUNICIPAL WATER RIGHTS]

14. Remarks:

P/U WITHIN CITY OF POCA TELLO & VICINITY.

29-7118 (well #Airport 1 or well #42), 29-7119 (well #Airport 2 or well #41)

15. Basis of Claim:

LICENSES

16. Signature(s)

(a) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am the City Attorney of the City of Pocatello, a Municipal Corporation, that I have signed the foregoing document in the space below as the City Attorney of the City of Pocatello and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent: A. Dean Tranter

Title and Organization: _____

City Attorney, City of Pocatello

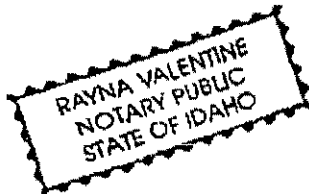
4-21-03
Date

STATE OF IDAHO)

) ss.

County of Bannock)

Subscribed and sworn to before me this 21st day of April, 2003.



Rayna Valentine
NOTARY PUBLIC
Residing at Pocatello
My commission Expires 4/28/09

Exhibit I - 1

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-7118
NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.010 CFS
1,114.00 AFY

PRIORITY DATE: 04/11/1973

POINT OF
DIVERSION: T06S R33E S16 NWNWSW Within POWER County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 11/01	4.010 CFS 1,114.00 AFY

PLACE OF USE: IRRIGATION Within POWER County

T06S R33E S16	SWNW	40.0	T06S R33E S16	SENW	32.0
T06S R33E S16	NESW	32.0	T06S R33E S16	NWSW	40.0
T06S R33E S16	SWSW	28.0	T06S R33E S16	SESW	12.0
T06S R33E S17	SENE	32.0	T06S R33E S17	NESE	32.0
T06S R33E S17	SESE	30.0	T06S R33E S20	NENE	0.5

278.5 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Exhibit I - 2

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-7119

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 6.000 CFS
1,200.00 AFY

PRIORITY DATE: 04/11/1973

POINT OF
DIVERSION: T06S R33E S9 SENWSW Within POWER County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 11/01	6.000 CFS 1,200.00 AFY

PLACE OF USE: IRRIGATION Within POWER County

T06S R33E S09	NENW	2.0	T06S R33E S09	NWNW	2.0
T06S R33E S09	SWNW	40.0	T06S R33E S09	SENW	34.0
T06S R33E S09	NESW	34.0	T06S R33E S09	NWSW	40.0
T06S R33E S09	SWSW	40.0	T06S R33E S09	SESW	34.0
T06S R33E S16	NENW	34.0	T06S R33E S16	NWNW	40.0

300 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Exhibit J - 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

Subcase No. 29-7118

Case No. 39576)

STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ Name and Address
Should be: _____
2. ☐ Source
Should be: _____
3. ☐ Quantity
Should be: _____
4. ☐ Priority Date
Should be: _____
5. ☐ Point(s) of Diversion
Should be: _____
6. ☐ Instream Flow Description
Should be: _____
7. ☒ Purpose(s) of Use
Should be: municipal
8. ☐ Period of Year
Should be: _____
9. ☒ Place of Use
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law. This right is used for the irrigation of specified lands within T06S R33E S16 SWNW (40.0), T06S R33E S16 SENW (32.0), T06S R33E S16 NESW (32.0), T06S R33E S16 NWSW (40.0), T06S R33E S16 SWSW (28.0), T06S R33E S16 SESW (12.0), T06S R33E S17 SENE (32.0), T06S R33E S17 NESE (32.0), T06S R33E S17 SESE (30.0), T06S R33E S20 NENE (0.5)."

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

Purpose of use: This water right is used by the City of Pocatello in its capacity and function as a municipality.

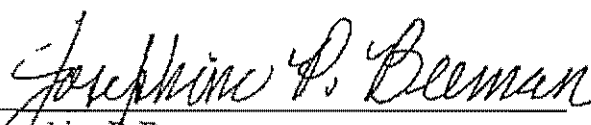
Place of use: This municipal right is used within the municipal service area of the City of Pocatello.

VERIFICATION

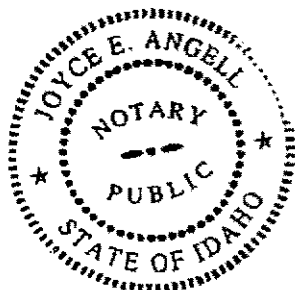
State of Idaho)
) ss.
County of Ada)

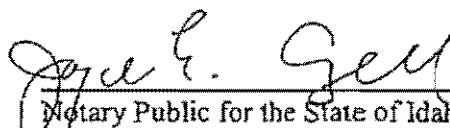
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003




Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

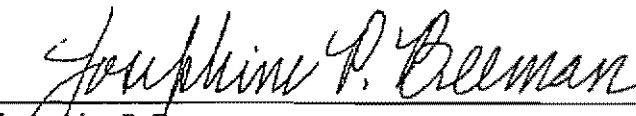
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beerman

Exhibit J - 2

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. 29-7119

Case No. 39576

STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:
Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: municipal
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law. This right is used for the irrigation of specified lands within T06S R33E S09 NENW (2.0), T06S R33E S09 NWNW (2.0), T06S R33E S09 SWNW (40.0), T06S R33E S09 SENW (34.0), T06S R33E S09 NESW (34.0), T06S R33E S09 NWSW (40.0), T06S R33E S09 SWSW (40.0), T06S R33E S09 SESW (34.0), T06S R33E S16 NENW (34.0), T06S R33E S16 NWNW (40.0)."

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

Purpose of use: This water right is used by the City of Pocatello in its capacity and function as a municipality.

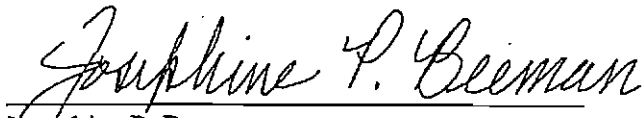
Place of use: This municipal right is used within the municipal service area of the City of Pocatello.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

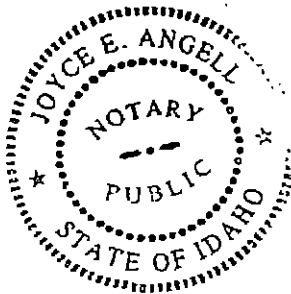
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

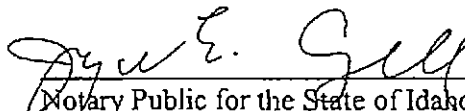
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
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Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

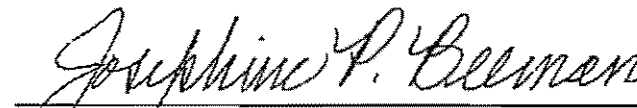
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Exhibit K - 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
)
Case No. 39576)
)
)
_____)

Subcase No. 29-7118

AMENDED
STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See "Reasons supporting objections" below.
3. ☒ **Quantity**
Should be: See "Reasons supporting objections" below.
4. ☒ **Priority Date**
Should be: See "Reasons supporting objections" below.
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: municipal; see also "Reasons supporting objections" below.
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right. This right is used for the irrigation of specified lands within T06S R33E S16 SWNW (40.0), T06S R33E S16 SENW (32.0), T06S R33E S16 NESW (32.0), T06S R33E S16 NWSW (40.0), T06S R33E S16 SWSW (28.0), T06S R33E S16 SESW (12.0), T06S R33E S17 SENE (32.0), T06S R33E S17 NESE (32.0), T06S R33E S17 SESE (30.0), T06S R33E S20 NENE (0.5)."

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

1. Source, quantity, priority date and purpose of use (remark, general provision): All 38 of the City of Pocatello's basin 29 state-law water rights should include the following remark regarding

the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

All 38 of the City of Pocatello's basin 29 state-law water rights should be decreed with the following general provisions:

Separate Streams:

For purposes of water distribution in the Portneuf River drainage basin, water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Portneuf River, and will be administered separately from all other water rights in Basin 29:

Mink Creek

Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

Separate Administration: All 38 of the City of Pocatello's basin 29 state-law water rights, including water right no. and source, should be decreed with the following general provisions:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Basin 29 in accordance with the prior appropriation doctrine as established by Idaho law:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Swan Falls: This objection is parallel to the Swan Falls objections in Basin 37 (Consolidated Subcase No. 37-02499). Because the Swan Falls objections in Basin 37 have not been designated a basin-wide issue, this objection addresses the Swan Fall protections for water rights in Basin 29.

No decree entered in the SRBA will supercede, preempt, modify, terminate, extend or otherwise affect the legal force and effect of the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract (so long as the Agreement and Contract remain in effect),

Exhibit K - 2

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. 29-7119

Case No. 39576

AMENDED
STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, LSB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See "Reasons supporting objections" below.
3. ☒ **Quantity**
Should be: See "Reasons supporting objections" below.
4. ☒ **Priority Date**
Should be: See "Reasons supporting objections" below.
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: municipal; see also "Reasons supporting objections" below.
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right. This right is used for the irrigation of specified lands within T06S R33E S09 NENW (2.0), T06S R33E S09 NWNW (2.0), T06S R33E S09 SWNW (40.0), T06S R33E S09 SENW (34.0), T06S R33E S09 NESW (34.0), T06S R33E S09 NWSW (40.0), T06S R33E S09 SWSW (40.0), T06S R33E S09 SESW (34.0), T06S R33E S16 NENW (34.0), T06S R33E S16 NWNW (40.0)."
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

1. Source, quantity, priority date and purpose of use (remark, general provision): All 38 of the City of Pocatello's basin 29 state-law water rights should include the following remark regarding

the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

All 38 of the City of Pocatello's basin 29 state-law water rights should be decreed with the following general provisions:

Separate Streams:

For purposes of water distribution in the Portneuf River drainage basin, water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Portneuf River, and will be administered separately from all other water rights in Basin 29:

Mink Creek

Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

Separate Administration: All 38 of the City of Pocatello's basin 29 state-law water rights, including water right no. and source, should be decreed with the following general provisions:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Basin 29 in accordance with the prior appropriation doctrine as established by Idaho law:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Swan Falls: This objection is parallel to the Swan Falls objections in Basin 37 (Consolidated Subcase No. 37-02499). Because the Swan Falls objections in Basin 37 have not been designated a basin-wide issue, this objection addresses the Swan Fall protections for water rights in Basin 29.

No decree entered in the SRBA will supercede, preempt, modify, terminate, extend or otherwise affect the legal force and effect of the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract (so long as the Agreement and Contract remain in effect),

Consent Judgments in *Idaho Power Co. v. State of Idaho*, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) and *Idaho Power Co. v. State of Idaho*, Case No. 62237 (Fourth Judicial Dist. Mar. 9, 1990), and the 1982 State Water Plan (as amended in 1985).

2. Purpose of use, correction: This water right is used by the City of Pocatello in its capacity and function as a municipality.

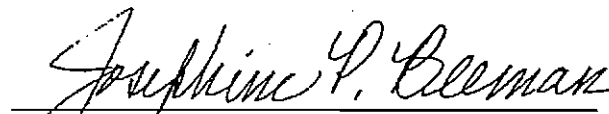
3. Place of use: Beneficial use of a municipal water right includes all actions necessary to comply with public health and safety standards. The City of Pocatello's municipal service area includes all lands necessary to complete the beneficial use of the municipal water right.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

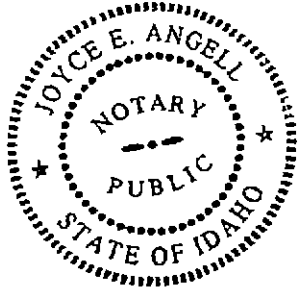
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

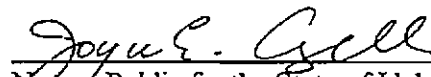
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 18, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 18, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

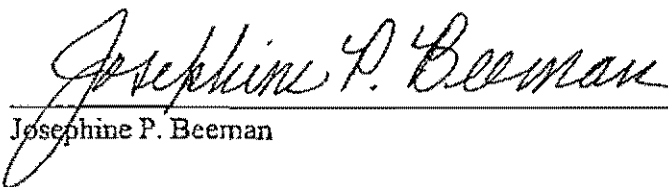
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Exhibit L

WATER RIGHT LICENSE

WATER RIGHT NO. 29-7431

Priority: December 29, 1977 Amount: 9.28 CFS 2723.0 AFA

This is to certify, that CITY OF POCATELLO
P.O. BOX 4169

POCATELLO, ID 83205-4169 has complied with the terms and conditions of the permit issued pursuant to Application for Permit dated December 29, 1977, and has submitted proof to the Department of Water Resources on July 11, 1983, that water has been applied to a beneficial use; an examination by the Department indicates that the works have a diversion capacity of 9.28 cfs of water from;

WASTE WATER tributary to FORKNEUF RIVER

and that a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>VOLUME</u>
Irrigation	04/01 to 11/01	9.28 cfs	2723.0 afa

LOCATION OF POINT OF DIVERSION(S): SWNE , Sec. 7, Township 6S, Range 34E
Bannock County

PLACE OF USE: Irrigation

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
5S	34E	25	NENE 24	NWNE 19	SWNE 39	SENE 38	
			NENW 12	NWNW 14	SWNW 35	SENW 25	
			SESW 11	NESE 33	NWSE 30	SWSE 39	
			SESE 35				354
	26		NENE 8	SENE 40	NESE 37	SESE 4	89
	36		NENE 32	NWNE 37	SWNE 40	SENE 40	
			NENW 17	NESE 3	NWSE 3		172
5S	35E	30	NWNE 5	SWNE 7	NENW 40	NWNW 33	
			SWNW 38	SENW 39			162

Total number of acres irrigated: 777

CONDITIONS/REMARKS:

1. The right to the use of the water hereby confirmed is limited to the amount which can actually be beneficially used and is restricted and appurtenant to the lands or place of use and to the purpose herein described, as provided by the laws of Idaho.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than 0.2 cfs per acre or more than 3.5 afa per acre for the lands above.

JUL 01 1987

State of Idaho
Department of Water Resources

PAGE 2

WATER RIGHT LICENSE

WATER RIGHT NO. 29-7431

CONDITIONS/REMARKS:

5. Use of water under this license is subject to control by the watermaster of State Water District No. 29 .

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 11th day of JUNE, 1987.

Acting for the

Director

Norman C. Young

MICROFILMED

JUL 01 1987

Exhibit M

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-07431
Date Received: 3/23/1998 4/1/90
Receipt No: C016458
Received By: RO

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCA TELLO
Address: P.O. BOX 4169
POCA TELLO, ID

83205-4169

2. Date of Priority: DEC 29, 1977

3. Source: WASTE WATER

Trib. to: PORTNEUF RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	34E	7	SW	NE			BANNOCK

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	9.280		2723.00

7. Total Quantity Appropriated is:
9.280 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is 1942.5 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05S	34E	25	NE	NE		IRR	24.0
			NW	NE		IRR	19.0
			SW	NE		IRR	39.0
			SE	NE		IRR	38.0

A29-07431

Page 1

Date: 04/16/90

FILED
MAY 11 1992

APR 23 1990

3452

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
05S	34E	25	NE		NW		IRR	12.0
			NW		NW		IRR	14.0
			SW		NW		IRR	35.0
			SE		NW		IRR	25.0
			SE		SW		IRR	11.0
			NE		SE		IRR	33.0
			NW		SE		IRR	30.0
			SW		SE		IRR	39.0
			SE		SE		IRR	35.0
			Section Acres					354.0
		26	NE		NE		IRR	8.0
			SE		NE		IRR	40.0
			NE		SE		IRR	37.0
			SE		SE		IRR	4.0
			Section Acres					89.0
		36	NE		NE		IRR	32.0
			NW		NE		IRR	37.0
			SW		NE		IRR	40.0
			SE		NE		IRR	40.0
			NE		NW		IRR	17.0
			NE		SE		IRR	3.0
			NW		SE		IRR	3.0
			Section Acres					172.0
	35E	30	NW		NE		IRR	5.0
			SW		NE		IRR	7.0
			NE		NW		IRR	40.0
			NW		NW		IRR	33.0
			SW		NW		IRR	38.0
			SE		NW		IRR	39.0
			Section Acres					162.0
			Total Acres					777.0

11. Place of use in counties: BANNOCK

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
PORT HALL IRRIGATION DISTRICT

14. Remarks:

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am MAYOR of _____ Title

CITY OF POCA TELLO , that I have signed the foregoing
Organization
document in the space below as MAYOR of _____ Title

CITY OF POCA TELLO and that the statements contained in the
Organization
foregoing document are true and correct.

[Signature]
Signature of Authorized Agent

MAYOR / CITY OF POCA TELLO
Title and Organization

4-17-90
Date

State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 18th day

of April 19 90

[Signature]
Notary Public

Seal

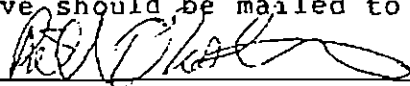
Residing at Pocatello

My Commission Expires 8-18-91

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Costello will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature 

Address 775 n. 8th Boise, ID 83702

Date 4/16/90

Exhibit N

RECEIVED

APR 25 2003

Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 29-7431
Date Received:
Receipt No:
Received By:

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF POCA TELLO Phone: (208)232-4311

PO BOX 4169
POCA TELLO ID USA 83201

2. Date of Priority: December 29 1977

3. Source: WASTE WATER to the extent it is not generated from non-municipal
diversions; REUSE of municipal diversions

4. Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County Type

SEE ATTACHMENT A

5. Description of diverting works:

32 WELLS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MUNICIPAL	1/01	12/31	9.28	

7. Total Quantity Appropriated is:
9.28 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses: MUNICIPAL, CITY OF POCA TELLO

10. Place of use: WITHIN THE SERVICE AREA OF THE CITY OF POCA TELLO'S MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW.

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
----------	-------	---------	------------	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used: [LIST/ATTACH CITY'S MUNICIPAL WATER RIGHTS]

14. Remarks:

P/U WITHIN CITY OF POCA TELLO & VICINITY.

29-7431: based on license, except that explanatory statement should be changed as follows: THE SOURCE IS THE CITY OF POCA TELLO'S DIVERSIONS FOR MUNICIPAL USE. THIS IS A REUSE OF THAT MUNICIPAL WATER.

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am the City Attorney of the City of Pocatello, a Municipal Corporation, that I have signed the foregoing document in the space below as the City Attorney of the City of Pocatello and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent: A. Dean Tranter

Title and Organization: _____

City Attorney, City of Pocatello

4-21-03
Date

STATE OF IDAHO)

) ss.

County of Bannock)

Subscribed and sworn to before me this 21st day of April, 2003.



Rayna Valentine
NOTARY PUBLIC

Residing at Pocatello

My commission Expires 4/28/09

Exhibit O

SRBA

DIRECTORS REPORT 29-07431

Return to SRBA Home Page

IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 29-07431

Name and Address: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO, ID 83205

Source: WASTE WATER Tributary: PORTNEUF RIVER

Quantity: 9.28 CFS
3108.00 AFY

Priority Date: 12-29-1977

Diversion Point: T06S R34E S07 SWNE Within Bannock County

Purpose and

Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	04-01 TO 11-01	9.28 CFS
			3108.00 AFY

Place of Use:	Irrigation	Within Bannock County	
T05S R34E S25		NENE 24	NWNE 19
		SWNE 39	SENE 38
		NENW 12	NWNW 14
		SWNW 35	SENE 25
		SESW 11	NESE 33
		NWSE 30	SWSE 39
		SESE 35	
S26		NENE 8	SENE 40
		NESE 37	SESE 4

S36	NENE 32	NWNE 37
	SWNE 40	SENE 40
	NENW 17	NESE 3
	NWSE 3	
R35E S30	NWNE 5	SWNE 7
	NENW 40	NWNW 33
	SWNW 38	SENE 39
777 Acres Total		

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - License

THE SOURCE OF THIS RIGHT IS WASTE WATER ORIGINALLY DIVERTED BY
THE CITY OF POCA TELLO.

Return to SRBA Home Page

Exhibit P

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 29-07770

Proposed Priority: May 21, 1984 Maximum Diversion Rate: 5.72 CFS

This is to certify, that CITY OF POCATELLO
P.O. BOX 4169
POCATELLO, ID 83205

has applied for a permit to appropriate water from: GROUNDWATER
and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
IRRIGATION	04/01 to 10/15	5.72 CFS

LOCATION OF POINT(S) OF DIVERSION: SENE Sec. 12, Township 06S, Range 33E
POWER County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC	ACRES	ACRES	ACRES	TOTAL
06S	33E	1	SWSE 9	SESE 9		18
		12	NENE 40	NWNE 40	SWNE 40	
			SENE 25	NENW 40	SENE 40	
			NESW 25	NESE 3	NWSE 15	268

Total number of acres irrigated: 286

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before January 1, 1991.
2. Subject to all prior water rights.
3. Prior to the diversion of water under this permit a flow measurement port or other device as specified by the Department shall be installed to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.
4. Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
6. The Director retains jurisdiction of the permit and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
7. The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

00000000

Permit To Appropriate Water

NO. 29-07770

CONDITIONS/REMARKS:

8. The maximum rate of diversion for irrigation purposes under this permit shall not exceed 5.72 cfs.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this

7th day of December, 1989.

for R. Keith Higginson, Director
R. Keith Higginson

Exhibit Q

3467

RECEIVED

DEC 15 1989

no fee enc.
Department of Water Resources

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES APR 5 1990

PROOF OF BENEFICIAL USE

Department of Water Resources

RECEIVED
APR 15 1989

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

Permit No. 29-07770Telephone No. (208) 234-6254Name(s) of Permit Holder(s): City of PocatelloPost Office Address: P.O. Box 4169Source of Water: GroundwaterIf ground water, well driller's name: Jack CushmanDate drilled: 12/30/85 to 3/3/86

Extent of Use:

Domestic _____ (No. of households)

Irrigation 286 (No. of acres)

Stockwater _____ (No. and type of stock)

Other _____

Total rate and/or volume for which proof is submitted 5.72 cfs 600 acre/feetShow date water was first diverted and beneficially used under this permit: May 01, 1989 ✓

One of the following may be a condition of approval of your permit:

Measuring device: Required? Yes XNo Installed? XYes No (Propeller Meter)

OR

Flow Measurement Port: Required? Yes No Installed? Yes NoFee Enclosed: \$ paid (See License Examination Fee Schedule) (See IDWR Recpt. #33550 and City of Pocatello Check #2055, 5/10/84)

Person to contact to accompany the Department representative during the field examination:

Jay B. Ulrich
Name(208) 234-6254
Telephone No.Box 4169 Pocatello ID 83201-4169
Address

MICROFILMED

The above information is my true statement of the extent to which the above numbered permit has been developed and relinquish any undeveloped portion of the permit to the state of Idaho.

MAY 18 1990

12/12/89
DateJay B. Ulrich
Signature (and title if on behalf of a company or organization)

DEC Superintendent

3438

Exhibit R

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-07770
Date Received: 3/28/1990 4/19/90
Receipt No: 0011498
Received By: RAO

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCA TELLO
Address: P.O. BOX 4169
POCA TELLO, ID

83205

2. Date of Priority: MAY 21, 1984

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	33E	12	SE	NE			POWER

5. Description of diverting works:
WELL (WPC PLANT), PUMP, PIPELINE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/15	5.720		

7. Total Quantity Appropriated is:
5.720 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 715.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	33E	1	SW	SE		IRR	9.0
			SE	SE		IRR	9.0

Section Acres 18.0

A29-07770

Page 1

Date: 04/16/90

MICROFILMED

NOV 13 1992

3470



10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
06S	33E	12	NE NE		IRR	40.0
			NW NE		IRR	40.0
			SW NE		IRR	40.0
			SE NE		IRR	25.0
			NE NW		IRR	40.0
			SE NW		IRR	40.0
			NE SW		IRR	25.0
			NE SE		IRR	3.0
			NW SE		IRR	15.0
					Section Acres	268.0
					Total Acres	286.0

11. Place of use in counties: POWER

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:
The maximum rate of diversion for irrigation purposes under this permit shall not exceed 5.72 cfs.

15. Basis of Claim: PERMIT

16: Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am MAYOR of
_____ Title
CITY OF POCA TELLO, that I have signed the foregoing
Organization
document in the space below as MAYOR of
_____ Title
CITY OF POCA TELLO and that the statements contained in the
Organization
foregoing document are true and correct.

Peter Angstadt
Signature of Authorized Agent

MAYOR / CITY OF POCA TELLO
Title and Organization

4-17-90
Date

State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 18th day
of April 19 90

Connie Lee Blackburn
Notary Public

Seal

Residing at Pocatello

My Commission Expires 8-18-91

17: Notice of Appearance:

Notice is hereby given that I, Patrick D. Castello will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Pat D Castello

Address 775 N. 8th Boise, ID 83702

Date 4/16/90

Exhibit S

[Close](#)IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

11/29/2006

WATER RIGHT NO. 29-7770

Owner Type	Name and Address
Current Owner	CITY OF POCA TELLO PO BOX 4169 POCA TELLO, ID 83205 (208)234-6254

Priority Date: 05/21/1984

Basis: License

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	4.46 CFS	1120 AFA
Total Diversion			4.46 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NESENE	Sec. 12	Township 06S	Range 33E	POWER County
--------------	--------	---------	--------------	-----------	--------------

Place(s) of use:

Place of Use Legal Description: IRRIGATION POWER County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
06S	33E	1		SWSE	5									
		12		NENE	27		NWNE	40		SWNE	40		SENE	40
				NENW	40		SENE	40						
				NESW	26									
				NESE	7		NWSE	15						

Total Acres: 280

Conditions of Approval:

1.	R64	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
2.	048	The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.

Dates:

Licensed Date: 01/02/2003

Decreed Date:

Permit Proof Due Date: 1/1/1991

Permit Proof Made Date: 3/16/1990

Permit Approved Date: 12/7/1989

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 05/21/1984

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 4

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust: N

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

3477



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 28, 2005

Josephine Beeman, Esq.
Beeman and Associates PC
409 W Jefferson St.
Boise, ID 83702-6049

Re: Pocatello's Biosolids Well (Water Right 29-7770)

Dear Jo:

I am responding to your letter dated April 28, 2005 relative to the City of Pocatello well described by Water Right No. 29-7770. At a meeting this summer I mentioned the results of our analysis in this matter, but this letter provides a written response. I apologize for the lateness of this reply.

After receiving your letter, I requested from Mr. Jeff Peppersack of this office an analysis of the proposal, posing the question: "Did IDWR err in issuing 29-7770 with an irrigation use?" A copy of his reply, dated June 23, 2005, is enclosed. Jeff's assessment is that IDWR did not err in issuing water right no. 29-7770 with an irrigation use. In our earlier discussions we had indicated a willingness to review this matter with the potential of issuing an amended license if an error had been made. Based on this follow-up analysis, we are not planning to issue an amended license.

During our meeting this summer I indicated that an alternative to the issuance of an amended license for this water right is modification of the nature of use via a water right transfer. Such a transfer would entail continuance of the acre-foot limitation established by the license, but if approved it would broaden the uses to which the water could be applied. From our perspective, to avoid competing processes, it would be preferable to wait until a partial decree is issued to file the application for transfer.

If you have questions relative to this letter, feel free to contact me at 208-287-4800.

Sincerely,

David R. Tuthill, Jr., Ph.D., P.E.
Administrator, Water Management Division

Enclosure: Memo from Jeff Peppersack dated June 23, 2005

3478

MEMORANDUM

Date: June 23, 2005

To: Dave Tuthill

From: Jeff Peppersack

Re: Review of License 29-7770

This memo addresses your question "Did IDWR err in issuing 29-7770 with an irrigation use. I have reviewed the water right file and found the following:

The application for permit was received in May, 1984 from the City of Pocatello with a proposed use of irrigation from a ground water source. The remarks on the application indicated that the permit is necessary to supply irrigation water for a farming operation. The remarks also indicated that treated sludge will be applied to the farmland as fertilizer and soil conditioner and the well is necessary to irrigate crops.

On July 1, 1987, the department received a letter from the city that included the following statements:

"...please be aware that the proposed use for waters described in the permit application is for irrigation of 286 acres of farmland. The farm is owned and will be operated by the City of Pocatello. The purpose of the farming operation is to provide a crop and soil system which will allow for utilization of stabilized domestic sewage sludge to be transported from our municipal wastewater treatment plant and be applied to the land as a crop nutrient source and soil conditioner.

Because of the intended use of the land and water we would request your assignment of our water application as a DCMJ as defined in the State Water Plan."

The department responded with a letter dated July 28, 1987 and indicated that the use cannot be considered domestic, commercial, municipal or industrial (DCMJ) as requested. The department's letter did not provide reasons for the decision. However, the department's Administrator's Memorandum, dated November 15, 1979 (Application Processing No. 18), defined municipal use to include irrigation and other uses within the corporate limits of a municipality. That policy may have been the basis for the decision to maintain the description as irrigation use.

The permit was issued in December, 1989 for irrigation use. Proof of beneficial use was received in March, 1990 indicating irrigation use.

At the time of licensing, "municipal purposes" was more clearly defined by statute (Section 42-202B, *Idaho Code*) and includes "irrigation of parks and open space." That definition has generally been interpreted by the department to exclude irrigation for agricultural crop production purposes. That interpretation may be debated, but the time for debate would be at the time of permitting or licensing.

Although the primary purpose for the city's farming operation may have been for the disposal of treated solid waste, it is clear that the primary use of water under the water right was for irrigation of agricultural crops. In 1997, the department approved a transfer filed by the City of Boise for a similar solid waste disposal project; the purpose of use was described as irrigation.

License 29-7770 was issued in January, 2003 for irrigation use. The license was issued as a preliminary order of the department; no appeal or petition for reconsideration was submitted and the approval order became a final order of the department.

The department considers requests to amend licenses based on a clear showing of computational or clerical errors that the department was unaware of at the time of licensing. The determination of purpose of use is often a matter of judgment, especially when two or more recognized uses may describe the actual beneficial use of water developed by a permit holder. The purpose of use associated with 29-7770 was raised as an issue prior to permit approval and considered by the department at that time. It would be difficult to characterize that judgment call as a computational or clerical error. In addition, the decision could have been debated at the time of licensing through a petition for reconsideration; it was not.

My conclusion is that IDWR did not err in licensing 29-7770 as irrigation use.

Exhibit T

RECEIVED

APR 25 2003

Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 29-7770
Date Received:
Receipt No:
Received By:

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF POCA TELLO Phone: (208)232-4311

PO BOX 4169
POCA TELLO ID USA 83201

2. Date of Priority: MAY 21 1984

3. Source: GROUND WATER

Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County Type

SEE ATTACHMENT A

5. Description of diverting works:

32 WELLS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MUNICIPAL	1/01	12/31	4.46	

7. Total Quantity Appropriated is:
4.46 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses: MUNICIPAL, CITY OF POCA TELLO

10. Place of use: WITHIN THE SERVICE AREA OF THE CITY OF POCA TELLO'S MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW.

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
----------	-------	---------	------------	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used: [LIST/ATTACH CITY'S MUNICIPAL WATER RIGHTS]

14. Remarks:

P/U WITHIN CITY OF POCA TELLO & VICINITY.

29-7770 (well # WPC)

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am the City Attorney of the City of Pocatello, a Municipal Corporation, that I have signed the foregoing document in the space below as the City Attorney of the City of Pocatello and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent: _____
Title and Organization: _____

A. Dean Tranne
City Attorney, City of Pocatello

4-21-03
Date

STATE OF IDAHO)
) ss.
County of Bannock)

Subscribed and sworn to before me this 21st day of April, 2003.



Rayna Valentine
NOTARY PUBLIC
Residing at Pocatello
My commission Expires 4/28/09

Exhibit U

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-7770

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.460 CFS
1,120.00 AFY

PRIORITY DATE: 05/21/1984

POINT OF
DIVERSION: T06S R33E S12 NESENE Within POWER County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
04/01 10/31

QUANTITY
4.460 CFS
1,120.00 AFY

PLACE OF USE: IRRIGATION Within POWER County

T06S R33E S01	SWSE	5.0	T06S R33E S12	NENE	27.0
T06S R33E S12	NWNE	40.0	T06S R33E S12	SWNE	40.0
T06S R33E S12	SENE	40.0	T06S R33E S12	NENW	40.0
T06S R33E S12	SENW	40.0	T06S R33E S12	NESW	26.0
T06S R33E S12	NESE	7.0	T06S R33E S12	NWSE	15.0

280 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

3436₁₇₅₄

Exhibit V

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. 29-7770

Case No. 39576

STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: municipal
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law. This right is used for the irrigation of specified lands within T06S R33E S01SWSE (5.0), T06S R33E S12 NENE (27.0), T06S R33E S12 NWNE (40.0), T06S R33E S12 SWNE 40.0, T06S R33E S12 SENE (40.0), T06S R33E S12 NENW (40.0), T06S R33E S12 SENW (40.0), T06S R33E S12 NESW (26.0), T06S R33E S12 NESE (7.0), T06S R33E S12 NWSE (15.0)."

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

Purpose of use: This water right has always been used by the City of Pocatello in its capacity and function as a municipality.

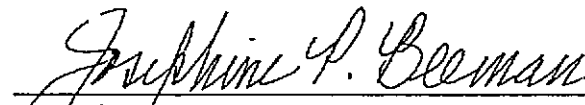
Place of use: This municipal right is used within the municipal service area of the City of Pocatello.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

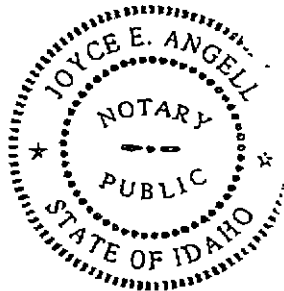
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

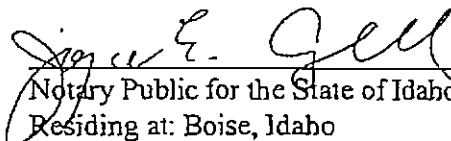
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

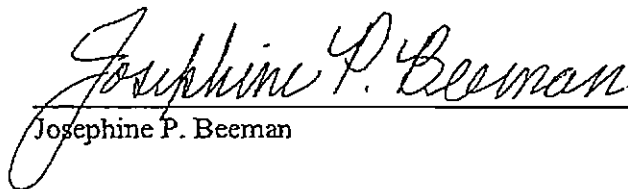
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Exhibit W

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

Subcase No. 29-7770

Case No. 39576)

AMENDED
STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ Name and Address
Should be: _____
2. ☒ Source
Should be: See "Reasons supporting objections" below.
3. ☒ Quantity
Should be: See "Reasons supporting objections" below.
4. ☒ Priority Date
Should be: See "Reasons supporting objections" below.
5. ☐ Point(s) of Diversion
Should be: _____
6. ☐ Instream Flow Description
Should be: _____
7. ☒ Purpose(s) of Use
Should be: municipal; see also "Reasons supporting objections" below.
8. ☐ Period of Year
Should be: _____
9. ☒ Place of Use
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right. This right is used for the irrigation of specified lands within T06S R33E S01SWSE (5.0), T06S R33E S12 NENE (27.0), T06S R33E S12 NWNE (40.0), T06S R33E S12 SWNE 40.0, T06S R33E S12 SENE (40.0), T06S R33E S12 NENW (40.0), T06S R33E S12 SENW (40.0), T06S R33E S12 NESW (26.0), T06S R33E S12 NESE (7.0), T06S R33E S12 NWSE (15.0)."

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

1. Source, quantity, priority date and purpose of use (remark, general provision): All 38 of the City of Pocatello's basin 29 state-law water rights should include the following remark regarding

the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

All 38 of the City of Pocatello's basin 29 state-law water rights should be decreed with the following general provisions:

Separate Streams:

For purposes of water distribution in the Portneuf River drainage basin, water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Portneuf River, and will be administered separately from all other water rights in Basin 29:

Mink Creek

Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

Separate Administration: All 38 of the City of Pocatello's basin 29 state-law water rights, including water right no. and source, should be decreed with the following general provisions:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Basin 29 in accordance with the prior appropriation doctrine as established by Idaho law:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Swan Falls: This objection is parallel to the Swan Falls objections in Basin 37 (Consolidated Subcase No. 37-02499). Because the Swan Falls objections in Basin 37 have not been designated a basin-wide issue, this objection addresses the Swan Fall protections for water rights in Basin 29.

No decree entered in the SRBA will supercede, preempt, modify, terminate, extend or otherwise affect the legal force and effect of the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract (so long as the Agreement and Contract remain in effect), Consent Judgments in *Idaho Power Co. v. State of Idaho*, Case No.

81375 (Fourth Judicial Dist. Feb. 16, 1990) and *Idaho Power Co. v. State of Idaho*, Case No. 62237 (Fourth Judicial Dist. Mar. 9, 1990), and the 1982 State Water Plan (as amended in 1985).

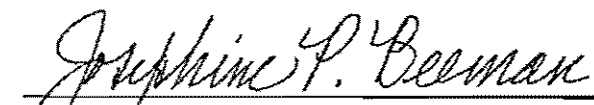
2. Purpose of use: This water right is used by the City of Pocatello in its capacity and function as a municipality.
3. Place of use: Beneficial use of a municipal water right includes all actions necessary to comply with public health and safety standards. The City of Pocatello's municipal service area includes all lands necessary to complete the beneficial use of the municipal water right.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

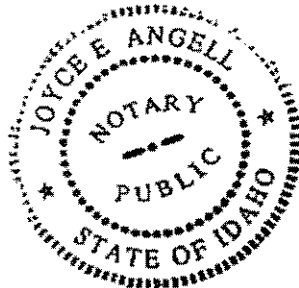
Josephine P. Beerman, duly sworn, upon oath, deposes and says:

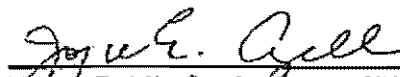
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beerman
Beerman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 18, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 18, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

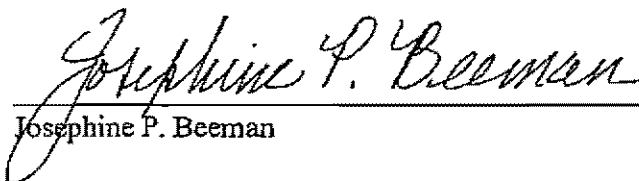
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

COPY

LODGED

CLERK OF DISTRICT COURT Fifth Judicial District County of Twin Falls - State of Idaho	
DEC 12 2006	
By _____	Clerk
_____	Deputy Clerk

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase Nos. 29-00271, <i>et al.</i> (see attached Exhibit A)
)	
)	
)	
Case No. 39576	)	RESPONSE MEMORANDUM IN OPPOSITION
	)	TO CITY OF POCA TELLO'S MOTION FOR
	)	SUMMARY JUDGMENT
)	
)	

This memorandum responds to the arguments made by the City of Pocatello, hereinafter referred to as the "City," in support of the *City of Pocatello's Motion For Summary Judgment on Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, hereinafter the "City's Motion." The City moves for summary judgment on the following two issues: (1) The City's twenty-two wells should be recognized as alternative points of diversion for the City's surface water rights from Mink Creek and Gibson Jack Creek under Idaho

Code § 42-1425. (2) Water right nos. 29-7119, 29-7110, 29-7770, and 29-7431 should be decreed with a municipal purpose of use. Disputed issues of fact preclude entry of summary judgment here for either matter, except that the proposed change in purpose of use for water right no. 29-7770 is clearly impermissible.

I. STATEMENT OF THE CASE

i. The Nature of the Proceedings

This controversy relates to the determination of the City's water rights.

ii. Course of the Proceedings

The City filed thirty-eight claims to water rights acquired under state law and filed objections to the Director's Recommendation for each of these thirty-eight state water right claims.

The State of Idaho filed a timely response to each of these objections.

The Surface Water Coalition filed a Joint Motion to Participate in March 2006. The Court granted this motion on April 25, 2006.

The Director of the Idaho Department of Water Resources, hereinafter "IDWR," filed a Supplemental Director's Report Regarding City of Pocatello's Basin 29 State-Based Water Rights on April 13, 2006, hereinafter referred to as "Supplemental Director's Report," which included a variety of maps and exhibits. Map 5 shows all points of diversions, and it shows that the surface water diversion from Mink Creek is over 6 miles south of the nearest ground water well of the City. The surface water diversion from Gibson Jack Creek is about two miles from the nearest ground water well. Exhibits K, L and M were described as certified copies of the following License and Claim Files for water right nos. 29-7118, 29-7119, 29-7431, and 29-7770.

Exhibit K: The lessee of land from the City applied for water right numbers 29-7118 and 29-7119 in the name of the City. The lessee used the water for irrigation of the leased land, and the

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City has not made any potable use of the water from the wells described as the point of diversion for these water rights.

Exhibit L: The Director issued license water right no. 29-7431 to the City for irrigation with wastewater from the City's sewage treatment plant on June 11, 1987.

The Supplemental Director's Report reached the following conclusions regarding water right no. 29-7770:

The City wants the licensed purpose of use to be change from irrigation to municipal. Yet, when the City completed its application for permit for this license in 1984, the proposed use was irrigation from a ground water source. The remarks on the application indicate that the water is necessary for the irrigation of crops. On July 1, 1987, the City requested that the Department consider defining the purpose of use for this license as 'DCMI' (domestic, commercial, municipal, industrial.) The Department responded by a letter dated July 28, 1987, that stated the use cannot be considered 'DCMI' as requested. Hence the change from irrigation to a broader use was specifically addressed during the licensing process. . . .

Changing the purpose of use in the SRBA would be a collateral attack on the license . . .

iii. Statement of Facts

The City submitted the *Spronk Water Engineers, Inc. Expert Report Dated September 29, 2006 Prepared for the City of Pocatello*, hereinafter "Exhibit B: Spronk Report," which was prepared by Gregory K. Sullivan, in support of its Motion for Summary Judgment. This report addresses the factual issues as follows:

3.0 Alternate Points of Diversion for Surface Water Rights:

...

3.1 The Department's Basis for Refusal

...

SWE [Spronk Water Engineers, Inc.] has been advised by Pocatello's legal counsel that the Transfer Guidelines are not legally binding principles for limiting SRBA claims for alternate points of diversion. As a result the factual basis for the City's claim was evaluated by other means. (See Pocatello's Brief in Support of Motion for Summary Judgement on IDWR's Authority Under I.C. § 42-1425)

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3.3 Historical Use

...

The City's water use records indicate the City used its wells as alternate points of diversion for its surface water rights prior to November 19, 1987.

3.4 Hydraulic Connection between Surface Water Sources and the LPRVA

...

In addition, information reviewed indicates that the LPRVA [Lower Portneuf River Valley Aquifer] is in hydraulic connection with the surface water system at two locations: (1) generally along the Bannock Range, where tributaries to the Portneuf River, including Mink Creek and Gibson Jack Creek, emerge from the foothills and comprise a source of recharge to the LPRVA, and (2) north of the City. Based on that information, it is my opinion that the City's surface water diversions and ground water diversions are from the same water source.

3.5 Effect on Other Water Rights

...

Portneuf River and Snake River Water Rights

The City's use of the surface water rights diverted at the City's interconnected municipal wells will be generally the same as it was historically, except that water will be diverted from the interconnected City Wells rather than from the diversion structures on Mink and Gibson Jack Creeks.

Local Impacts

It is unlikely that Pocatello's municipal wells had any significant impact to neighboring wells prior to November 19, 1987 as a result of diverting its surface water rights at alternate points of diversion for the same reasons as described in section 2.

Exhibit B: Spronk Report, at 17-19.

ARGUMENT

I. STANDARD OF REVIEW FOR SUMMARY JUDGMENT.

Summary judgment is appropriate when the pleadings, depositions, affidavits, and admissions of records show that there was no genuine issue of material fact. In making that determination of whether an issue of material fact exists, all disputed facts are liberally construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. *Garner v. Bartshi*, 139 Idaho 430, 432 80

P.3d 1031, 1034 (2003). Substantive law defines as material those factual disputes that affect the outcome. Disputes about irrelevant matters do not defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

II. DISPUTED ISSUES OF FACT PRECLUDE SUMMARY JUDGMENT REGARDING THE DIVERSION OF THE SURFACE WATER RIGHTS FROM MINK CREEK AND GIBSON JACK CREEK FROM THE CITY'S WELLS.

The City requested that four surface water rights from Mink Creek and Gibson Jack Creeks be allowed to divert from the City's wells, which divert from the LPRVA, and argued that Idaho Code § 42-1425 authorized such a change. IDWR's Supplemental Director's Report described the basis for rejecting the City's claim here and stated as follows:

IDWR's Transfer Processing Memo No. 24 (October 20, 2002) provides guidance to agents when evaluating a request to change in source from surface water to ground water or to add a well as an alternate point of diversion for a surface water right. That memo provides:

(6) Change of Source. Whether the source would be changed from ground water to surface water or from surface water to ground water, factual evidence is needed that illustrates there is an immediate and direct connection between the surface and the well.

The City's expert rejected any consideration of Transfer Processing Memo No. 24 and provided a general conclusion that the surface water sources were interconnected with the LPRVA, that it is unlikely this change had any significant impact on other users, and that the City had diverted such surface water from its wells prior to November 19, 1987. Statement of the Case, hereinafter "SOC," at 4. Thus, the City argues that "IDWR, the State and the SWC have no information about injury to individual water rights by Pocatello's use of the 22 interconnected wells located at the points of diversion identified and recommended by IDWR for Pocatello's interconnected culinary system" and that this Court should grant it summary judgment on this issue. City's Motion at 4. The City has not applied the correct legal standard

for review of the Director's Recommendation here. If the correct legal standard is applied, it is apparent that dispute issues of fact preclude entry of summary judgment.

Claimants "bear[] both the burden of production as well as the burden of proof as to each element of a claimed water right." *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 742, 947 P.2d 409, 415 (1997). Pursuant to Idaho Code § 42-1411(4), the Director's Report "is *prima facie* evidence of the nature and extent of the water rights under state law." *Clear Springs Foods, Inc. v. Clear Lakes Trout Co.*, 136 Idaho 761, 764, 40 P.3d 119, 122 (2002). Claimants, as the objecting parties, have "the burden of going forward with evidence to establish any element of a water right which is in addition or inconsistent with the description in a director's report." Idaho Code § 42-1411(5); *see also State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 746, 947 P.2d 409, 419 (1997) ("The director's report is presumed to be correct until such time as a water claimant produces sufficient evidence to rebut that presumption."). *Hagerman Water Right Owners* also addressed the issue of what happens when the Director's *prima facie* determination is rebutted. The Court stated:

While HWRO's affidavits may dispel the presumed 'correctness' of the facts contained in the Director's Report, the facts contained therein still exist as facts. Facts contained in the affidavits create triable issues to the extent they conflict with the facts alleged in the Director's Report. **Once the presumption is rebutted, it disappears and the facts upon which the presumption is based are weighed with all other facts that may be relevant.**

130 Idaho at 746, 947 P.2d at 419. Even assuming *arguendo* that the conclusory opinions of the City's expert rebut the *prima facie* determination in the Supplemental Director's Report, the opinion of the Director remains that an injury to other water users would occur if the City's wells could be used as alternative points of diversion for the surface water rights.

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Thus, the Court has two opposing opinions about whether the changes would cause injury. There is no reason to treat opposing expert opinions any different from opposing "facts." Disputed issues exist, and summary judgment must be denied.

III. THE CITY HAS A VERY DIFFICULT BURDEN OF PROOF TO BEAR REGARDING THE ADDITION OF THE CITY'S WELLS AS ALTERNATE POINTS OF DIVERSION FOR ITS SURFACE WATER RIGHTS FROM MINK CREEK AND GIBSON JACK CREEK.

The City has two major problems with its request to add the City's wells as alternate points of diversion for its surface water rights. First, the standards set forth in the Transfer Processing Memorandum assist in identifying whether a proposed transfer will injure other water right. The City should be required to address these standards instead of ignoring them. Second, the existence of a hydraulic connection between Mink Creek and Gibson Jack Creek with the LPRVA does not address completely the issue of source of these water rights. The City should be required to address whether the proposed changes will make the water supply more reliable and thus provide the City a greater volume of water than its original diversions from Mink Creek and Gibson Jack Creek.

The City's rejection without analysis of the standards stated in Transfer Processing Memo is without any basis. That memorandum is intended to assist in the determination of the issue of injury. The requirement that there be "an immediate and direct connection between the surface source and the well" makes a great deal of sense when considering the issue of injury. The present matter illustrates why that test assists in addressing that issue of injury. The City's expert opines that the diversion of water from the City's wells has the same impact as if the water were diverted from the original surface water sources since the sources are interconnected. The City's expert fails to consider what happens during times of severe drought.

If the City diverted the entire surface water flows of Mink Creek and Gibson Jack Creek as the senior water user, downstream junior surface water users on Mink Creek and Gibson Jack Creek would have no source of surface water supply until the watershed increased sufficiently in area to provide surface water flow in the respective watercourses. If, instead, during that drought the City had been allowed to divert its Mink Creek and Gibson Jack Creek water rights from its wells, Mink Creek and Gibson Jack Creek would now have surface water flow at the City's diversion points, which had not been diverted by the City. Junior downstream surface water users on Mink Creek and Gibson Jack Creek now would divert the surface water flow of those watercourses. Those are diversions that would not have happened during the drought, but for the change in the City's points of diversions. Obviously, it is a benefit to the junior water right holders on Mink Creek and Gibson Jack Creek, but, it is also a big detriment. If we look at the entire water system, we have added a water demand that the priority system would have otherwise cut-off during the drought. That additional demand will operate to the injury of some water user downstream. The requirement from the Transfer Memo that "an immediate and direct connection between the surface source and the well" exist before a transfer is allowed would have prevented this additional demand. If the City continues to request this change in its water rights, the City should be required to address at trial the standards stated in the Director's Transfer Processing Memo.

This same concern may also be analyzed as an impermissible change in source. Idaho law has long held that "junior appropriators have a vested right to a continuance of the conditions existing on the stream at and subsequent to the time they made their appropriations, and that no proposed change in place of use or diversion will be permitted when it will injuriously affect such established rights." *Crockett v. Jones*, 47 Idaho 497, 504, 277 P. 550, 552 (1929). The

City's water rights from Mink Creek and Gibson Jack Creek have early priority dates back to before 1900. Much has happened since those rights were initially developed. Mink Creek and Gibson Jack Creek are small surface water tributaries of the Portneuf River. Small surface watersheds may have widely fluctuating flows during each year, and from year to year as droughts come and go. What the City is attempting to do by this request is to transform an unreliable surface water supply to a ground water supply that will always be there. Junior water rights were developed with the impact of a very early and large water right now held by the City from an unreliable water supply. If the change is allowed those water rights will then divert from a very reliable water supply. The total volume of water diverted will thus increase and operate to the injury of other water users. If the City continues to request this change in its water rights, the City should be required to address in its injury whether the requested changes in point of diversion would provide a greater supply of water available to the City and what effect this will have on other users.

IV. DISPUTED ISSUES OF FACT PRECLUDE ENTRY OF SUMMARY JUDGMENT REGARDING THE DETERMINATION OF THE PURPOSE OF USE FOR WATER RIGHT NOS. 29-7118, 29-7119, AND 29-7431.

The Director's Report concluded that the purpose of use for water right numbers 29-7118, 29-7119, and 29-7431 was irrigation. The City argues that it is a municipality, that municipal water use may include irrigation, and that the City has diverted and used water under those denominated rights as a municipality. City's Motion at 2. The City and the State of Idaho have some agreement here. We agree that a municipal water right may include irrigation. We agree that the City is a municipality that may exercise a municipal water right, but we do not agree that every diversion and use of water by a municipality under Idaho law is automatically a water right with a municipal purpose of use.

The designation of a water right as a municipal water right has some important privileges under recent amendments to Idaho Law. The Act of March 18, 1996, ch. 297, 1997 Idaho Sess. Laws 967 amended Idaho Code § 42-222(2) to exempt from forfeiture water rights held by a municipal provider, such as the City, to meet reasonably anticipated future needs. That Act also provided a definition of "municipal purposes" in Idaho Code § 42-202B(4)(6), which states as follows:

'Municipal purposes' refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled to supply to all those users with a service area, including those located outside the boundaries or a municipality served by a municipal provider.

Id. The City has made no effort to demonstrate that the uses under water right nos. 29-7118, 29-7119, and 29-7431 come within this definition of municipal purposes. A brief perusal of the Supplemental Director's Report indicates that disputed issues of fact exist regarding whether these water rights come within this definition of municipal purposes as follows:

Water right nos. 29-7118 and 29-7119: These water rights provide water for an irrigation purpose of use by a farmer who has a long term lease with the City. The farmer actually applied for the water in the name of the City. This water supply is not connected to the rest of the City's water system. Supplemental Director's Report, Exhibit K. Thus, this use appears to be traditional irrigation of a cropland, which is not within the definition of municipal use stated above.

Water right no. 29-7431: Wastewater from the sewage treatment plant operated by the City is disposed of by application to land described as the place of use. Thus, this use appears to be traditional land disposal of sewage sludge, which is not within the definition of municipal use stated above.

Disputed issues of fact exist regarding the Director's determination of the purpose of use for

water right nos. 29-7118, 29-7119, and 29-7431.

V. THE COURT SHOULD DENY THE REQUESTED CHANGE IN THE PURPOSE OF USE FOR WATER RIGHT NO. 29-7770 FROM IRRIGATION TO MUNICIPAL PURPOSES

- A. Idaho Code § 42-1425 does not authorize the proposed change in purpose of use from irrigation to municipal purposes

Idaho Code § 42-1425 authorizes the district court to recognize changes in purpose of use without compliance with Idaho law if the claimant is able to demonstrate that the proposed change in use occurred prior to the commencement of the SRBA on November 19, 1987, among other limitations. The undisputed facts in this matter demonstrate that this could not have occurred. The IDWR issued water right license no. 29-7770 on December 7, 1989 with an irrigation purpose of use. Since the date of the license post dates the commencement date of the adjudication, any claimed change in purpose of use after the issuance of a license was too late. Idaho Code § 42-1425 does not authorize the proposed change in use for water right no. 29-7770.

- B. Changing the purpose of use for water right no. 29-7770 from irrigation to municipal would be an impermissible collateral attack on the license issued here.

The SRBA District Court entered its *Order on Challenge (Consolidated Issues)* of "Facility Volume" Issue and "Additional Evidence Issue ("Fish Facility Volume") on December 29, 1999. The Court concluded that a claimant was not entitled to collaterally attack a water right license in the Snake River Basin Adjudication. *Id.* at 16.

Here, IDWR issued water right no. 29-7770 on December 7, 1989 with an irrigation purpose of use. During the licensing process, the City requested that the purpose of use be changed from irrigation to "DCML," and the IDWR denied this request. SOC at 3. Thus, the issue of changing the purpose of use was addressed in the licensing process. The City's objection is an impermissible collateral attack on the license.


CONCLUSION

Disputed issues of fact exist that preclude entry of summary judgment except with respect to water right no. 29-7770. The court has sufficient information regarding water right no. 29-7770 to enter judgment denying the requested change for that water right.

RESPECTFULLY SUBMITTED this 11th day of December 2006.

STATE OF IDAHO
LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

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EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07222
29-07322
29-07375
29-07431
29-07450
29-07502
29-07770
29-07782
29-11339
29-11344
29-11348
29-13558
29-13559
29-13560
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29-13639

CERTIFICATE OF SERVICE

I certify that on this 11th day of December 2006, I caused to be served the original and/or copy of the RESPONSE MEMORANDUM IN OPPOSITION TO CITY OF POCA TELLO'S MOTION FOR SUMMARY JUDGMENT on each of the following persons by the indicated method:

1. One Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☒ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

2. Copies to

Special Master Brigitte Bilyeu
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☒ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

City of Pocatello
c/o Josephine P. Beeman
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

Jeanette Wolfley
Attorney at Law
202 North Arthur
Pocatello, ID 83204

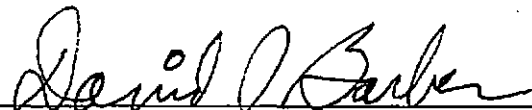
- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

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*Attorneys for Milner Irrigation District, North
Side Canal Company & Twin Falls
Canal Company*

IN THE COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

)
) Subcase Nos.: EXHIBIT A
) (City of Pocatello)
)
) **RESPONSE TO THE CITY OF POCATELLO'S**
) **SUMMARY JUDGMENT MOTION ON MUNICIPAL**
) **PURPOSE OF USE, INTERCONNECTION, &**
) **INJURY UNDER I.C. § 42-1425**
)
)

COMES NOW, American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company (collectively "Surface Water Coalition" or

SWC RESPONSE TO THE CITY OF POCA TELLO'S MOTION FOR SUMMARY JUDGMENT

“Coalition”), by and through their undersigned attorneys of record, and submits this *Response to the City of Pocatello’s Motion for Summary Judgment on Municipal Purpose of Use, Interconnection & Injury Under I.C. § 42-1425*, pursuant to AO1(6)(f) and IRCP 56(c). This *Response* further supported by the *Second Affidavit of Travis L. Thompson* filed together herewith. For the reasons set forth below, in addition to the reasons set forth in the *Motion for Summary Judgment*, and supporting memorandum, filed by the Coalition on November 30, 2006, this Court should deny Pocatello’s motion.

INTRODUCTION

Pocatello seeks summary judgment on three categories of its objections: 1) a municipal purpose of use for four previously licensed irrigation water rights; 2) a finding that certain waters in Basin 29 are interconnected with other waters in the Snake River Basin; and 3) that no I.C. § 42-1425 injury has been proven with respect to Pocatello’s alternate points of diversion for its interconnected culinary system. Summary judgment can only be granted when there is no “genuine issue as to any material fact” *and* the moving party is entitled to judgment “as a matter of law.” I.R.C.P. 56(c); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514 (1991). Pocatello’s motion should be denied because it is based on disputed facts and is completely lacking with respect to supporting legal authority for the theories behind its objections.

A. Pocatello’s Lack of Legal Authority to Support its Motion.

First, Pocatello cites no legal authority that would allow this Court to change licensed irrigation water rights into municipal water rights. As described in the Coalition’s *Motion for Summary Judgment*, Pocatello cannot collaterally attack its licenses in the SRBA. Therefore, its objections to the purpose of use for water rights #29-7118, #29-7119, #29-7431 and #29-07770 should be dismissed as a matter of law.

Second, Pocatello's motion as to the interconnection of certain waters is moot pursuant to the Presiding Judge's decision in the *Basin-Wide 5* proceedings and this Court's order dismissing Pocatello's "separate streams" objections with prejudice on July 14, 2006. As determined by the Presiding Judge in the *Basin-Wide 5* proceedings, "all water rights within [Basin 29] will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law." *See Ex. A to Second Thompson Aff. (Memorandum Decision and Order of Partial Decree and Exhibit A (Subcase No. 91-00005, February 27, 2002))*. Since Pocatello's "separate streams" objections were dismissed by this Court, the above general provision will apply to Pocatello's water rights and an order on summary judgment that Mink Creek, Gibson Jack Creek, the so-called LVPRA, the ESPA, and the Snake River are interconnected sources of water is unnecessary and moot.

Finally, Pocatello seeks summary judgment that there is no 42-1425 injury to other water rights by reason of Pocatello's operation of alternate points of diversion for its interconnected culinary system. Pocatello essentially reargues its first summary judgment that was denied by the Court's *Order on Summary Judgment* issued August 18, 2006. The "injury" issue was remanded to IDWR with the Special Master retaining concurrent jurisdiction. Neither IDWR nor Pocatello has provided any information that these additional proceedings have occurred or are likely to occur in the near future. In other words, the additional conclusions that the Court required IDWR to make with respect to the 42-1425 injury question have not been made (to the best of the Coalition's knowledge). Despite the above ruling, Pocatello attempts to take another summary judgment bite at the injury apple with its present motion. The Court has already decided this issue and determined summary judgment was not appropriate. The Court's prior order requires a denial of Pocatello's motion, again.

B. Pocatello's Misuse of Discovery Responses.

In support of its various theories outlined above, Pocatello offers a misleading recitation of the Coalition's discovery responses and concludes that the "answers ... result in the admission of facts supporting the factual basis for Pocatello's motion for summary judgment." *Pocatello Br.* at 2. Even if this were true, which it is not, Pocatello's motion must still be denied since it has no legal basis to warrant summary judgment. In other words, Pocatello's "undisputed facts", standing alone, do not justify summary judgment without proper legal authority and support. As set forth below, Pocatello's argument is devoid of any supporting legal theory based on statute, rule, or caselaw.

Furthermore, as evidenced by the discovery responses themselves (and not Pocatello's mischaracterization of those answers), the Coalition disputes Pocatello's factual assertions. While some of this is due to a lack of readily available information, much of it is a result of Pocatello's misinterpretation and misuse of the 2006 Supplemental Director's Report ("*706 Report*"). For example, Pocatello has construed a determination in the *706 Report* that Basin 29 surface waters and groundwaters are interconnected to somehow mean that Pocatello can automatically divert surface water rights through its groundwater wells. The Coalition is unaware of the basis for this claim and indicated so in its responses.

In sum, Pocatello's efforts to collaterally attack and redefine its licensed irrigation water rights should be rejected. In addition, the interconnection of all waters in Basin 29 with the rest of the Snake River Basin has already been determined in the SRBA through the Presiding Judge's *Basin-Wide 5* order. Finally, the 42-1425 "injury" question has been remanded to IDWR for further proceedings. Consequently, Pocatello's motion should be denied.

ARGUMENT

I. The Coalition Denies Pocatello's Factual Assertions.

The main thrust of Pocatello's motion for summary judgment is that certain discovery responses by the Coalition must be construed as an admission of certain factual evidence which, Pocatello concludes, makes their "municipal use" and "42-1425 injury" issues ripe for summary judgment. *See Pocatello Br.* at 1-2. Yet, Pocatello's mischaracterizations of the Coalition's responses to certain discovery requests, as well as its misinterpretation of information contained in the Director's *706 Report*, do not somehow render Pocatello's facts "undisputed". The discovery responses and the *706 Report* speak for themselves. As the Court can readily determine for itself, the facts Pocatello offers in support of its motion are plainly in dispute.¹

Notably, Pocatello does not even allege that the Coalition's responses to the discovery requests for water rights #29-7118 and #29-7119 constitute an admission. *See Pocatello Br.* at 7-9 (addressing perceived admissions by the State only). Pocatello does allege, however, that the Coalition's response to requests relative to water right #29-7770 were inadequate, and therefore "should be construed as admissions," because the "'truth of the matters' was readily obtainable within the [706 Report]." *Id.* at 9. The only "truth of the matter" revealed in the *706 Report* is that Pocatello's water right #29-07770 was licensed for irrigation purposes on January 2, 2003. *See Ex. B to Second Thompson Aff.* Pocatello did not appeal this license and thereby accepted the "irrigation" purpose of use. The *706 Report* does not establish that Pocatello's water right is or has ever been used for "municipal" purposes.

¹ On the other hand, the facts presented in the Coalition's *Motion for Summary Judgment* are not in dispute, therefore the Court can grant the Coalition's motion.

For example, a review of Exhibit N to the *706 Report* supports the Coalition's motion, not Pocatello's.² Specifically, Pocatello filed an application for permit for water right #29-07770 on December 7, 1989. *See Ex. C to Second Thompson Aff.* In the application (filed two years after the commencement of the SRBA), Pocatello indicates that the "water from the well will be necessary to irrigate the various yearly crops" at the city's "proposed sludge management site." *See id.* Pocatello represented that the water right would be used for "irrigation." *See id.* Likewise, when Pocatello filed its notice of a claim to a water right with this Court in 1990, it once again claimed that the use would be for "irrigation." *See Ex. R to Thompson Aff.* Accordingly, notwithstanding a review of the "license and claim files," the Coalition is unaware of any basis in fact or law, or any change in fact or law which would cause this right, originally claimed as an irrigation right, and licensed for the same purpose in 2003, to now be a "municipal" water right.

Furthermore, the Coalition's objection to Pocatello's vague and undefined phrases such as "municipal responsibility", "as part of its obligations as a municipality", and "airport security", as they relate to the use of Pocatello's irrigation water right #29-07770, is no basis for construing those objections as an admission. *See Pocatello Br.* at 9.

In sum, Pocatello's claim that the Coalition has "admitted" certain facts with respect to the four licensed irrigation water rights in question is nothing more than a misrepresentation of the facts to this Court. The Coalition did not admit that Pocatello used its licensed irrigation water rights for "municipal" purposes. The *706 Report* does not suggest that Pocatello used its licensed irrigation water rights for "municipal purposes". Pocatello's ambiguous word games in its discovery requests do not change the elements of its licensed irrigation water rights. At the

² Information regarding water right #29-07770 is contained in Exhibit N to the Director's *706 Report*. (mistakenly under claim file for water right #29-7382 in the copy served on the Coalition).

least, Pocatello's offered facts are in dispute warranting a denial of its summary judgment motion regarding "municipal use".

Notwithstanding the disputed facts, the Court can deny Pocatello's motion due to a missing legal basis to support its novel theory that licensed irrigation water rights can somehow turn into "municipal" water rights in the SRBA. As described below, the fact Pocatello, a city, owns "irrigation" water rights does not transform them into "municipal" water rights.

II. There is No Legal Basis to Change Pocatello's Licensed Irrigation Water Rights into "Municipal" Water Rights.

Pocatello's motion with respect to the "municipal" purpose of use for its licensed irrigation water rights, #29-7118, #29-7119, #29-7431, and #29-07770 fails as a matter of law. As explained in the Coalition's *Motion for Summary Judgment*, such an effort equates to an impermissible collateral attack on the licensing proceeding before IDWR. In other words, if Pocatello believed that its water rights were used for "municipal" purposes, it could have filed the appropriate applications for permit, or appealed the licenses when they were issued. Instead, Pocatello expressly applied for and accepted the water rights as licensed by IDWR, for "irrigation" purposes. IDWR recommended the same to this Court through the Director's recommendations for the water rights. As discussed in greater detail in the Coalition's *Motion for Summary Judgment*, filed in this matter on November 30, 2006, Pocatello is attempting to do, through an objection in the SRBA, what can only be done through an administrative transfer process before IDWR. Pocatello cannot change the point of diversion or purpose of use via an objection to a Director's recommendation in the SRBA, particularly when the water rights in question were recommended (1) as they were previously licensed; *and* (2) as they were originally claimed by Pocatello in 1990. Accordingly, Pocatello's motion should be denied and the relevant objections must be dismissed with prejudice.

A. Pocatello's "Capacity and Function" and the Use of the Water Rights to "Benefits Its Inhabitants" Does Not Alter the Rights' Purpose of Use.

Pocatello alleges that the Court should transform its prior licensed irrigation water rights into "municipal" water rights as a matter of law on the basis that these rights are "used by the City in its capacity and function as a municipality" and that the use "benefits its inhabitants". Pocatello claims "[a]s a matter of law, municipal water rights are defined by their use for purposes which benefit the City's inhabitants." *Pocatello Motion* at 2. Pocatello then cites I.C. § 42-202B and a Special Master's Report in subcase no. 34-10030 for support. Neither the statute nor the City of Arco's settled recommended partial decree establish the rule of law Pocatello seeks.³

At first glance, Pocatello's so-called legal basis for summary judgment is just a statement of fact, not a rule of law. After all, in what other "capacity and function" can a city use a water right other than as a municipality? A city is a municipality, a municipality is a city. Moreover, who else does a city's water use "benefit" other than its inhabitants? Stating what appears to be obvious, without any valid legal authority, is insufficient to change a water right's element as a matter of law in the SRBA.

Notwithstanding Pocatello's lack of legal support for its theory, and assuming for argument's sake that Pocatello uses the water rights "in its capacity and function as a municipality" for the "benefit of its inhabitants", such a qualifier does not somehow alter the elements of its previously licensed water rights. In other words, a water right's purpose of use element does not identify that it is used by a water right holder in the holder's particular

³ The elements of the City of Arco's water right #34-10030 were stipulated to through a Standard Form 5. See Ex. F to *Second Thompson Aff.* Pocatello was a respondent in that subcase, the Coalition is unaware of the basis of Pocatello's response. The purpose of use at issue in the subcase, "municipal", was claimed by Arco and recommended by IDWR. The parties stipulated to the purpose of use as being "municipal" and that element was unchanged in the *Special Master's Report Findings of Fact; Conclusions of Law* entered on April 8, 1997. Contrary to Pocatello's insinuations, there was no disputed issue as to the claimed "municipal" use, and the report did not establish any rule of law for the SRBA.

“capacity and function”, whatever that “capacity and function” may be, as a city, a water company, a farmer, a rancher, a business, or as any other entity. Cities can own water rights for a variety of purposes apart from a municipal use, including for irrigation, domestic, recreation, hydropower, and commercial purposes. *See* Ex. D to *Second Thompson Aff.* (Examples of irrigation and other rights held by cities). The purpose of use is an element defined by the terms of the water right, not by the water right holder’s status or what the right holder thinks the purpose of use should be. In other words, the water right, not the water right holder, defines the purpose for which it may be used.

A water right’s elements, including the purpose of use, define how and when a right may be used. An irrigation water right typically contains a season of use and specific place of use. For example, Pocatello’s water right #29-7119 can be used between April 1st and November 1st for 300 acres in Sections 9 and 16, Township 6 South, Range 33 East, Power County. A municipal water right is typically defined for a year-round season of use, and can be used for a variety of purposes within a city’s service. Transferring an irrigation water right into a municipal right unquestionably expands the nature and scope of the right. Indeed, Pocatello readily argues for such an expansion in its motion by alleging “[t]hese necessary municipal functions, which require the use of water may include, but are not limited to, maintenance of parks and green spaces, airport safety, and EPA-approved biosolids programs to treat and dispose of domestic sewage.” *Pocatello Motion* at 2 (emphasis added).

Furthermore, a water right’s purpose of use does not change just because “it benefits the city’s inhabitants.” For example, just because a city may own and use a non-consumptive hydropower right “in its capacity and function as a municipality”, does not transform that right into a consumptive “municipal” water right to be used for a host of other purposes. In addition,

even though a city's hydropower right "may benefit its inhabitants" by providing electricity or a source of revenue for the city, such a fact does not transfer the right into a "municipal" water right. If a city owns a consumptive use water right, such as a licensed irrigation water right (that defines a specific place and season of use), and the city wants to change that right to a "municipal" purposes of use (with an enlarged place and season of use), the city has the right to file an application for transfer with IDWR pursuant to I.C. § 42-222. The SRBA does not provide a substitute for that process.

B. The City of Arco's Stipulated Water Right (#34-10030) Does Not Establish a Rule of Law That a City's Licensed Irrigation Water Rights Can Transform Into Municipal Water Rights.

In addition, although a water right for "municipal purposes" acquired after 1996 is now defined as water for "residential, commercial, industrial, irrigation of parks and open space, and related purposes . . .", such a definition does not alter a city's water right that is licensed for a specific purpose of use, like irrigation. I.C. § 42-202B(6); *see also Special Master's Report for Water Right No. 34-10030* at 2, n. 1 ("the 1996 statutes did not alter pre-1996 rights held by municipalities."). All of the water rights at issue in this proceeding were acquired by Pocatello prior to 1996 (except #29-7770 which was licensed for irrigation purposes in 2003).

Pocatello's reliance upon the proceedings involving the City of Arco's beneficial use claim is inapposite and is of no relevance for these subcases. First, Arco filed a *beneficial use claim* for a "municipal" water right. The Director *recommended* the water right with a "municipal" purpose of use (unlike the facts here). *See* Ex. E to *Second Thompson Aff.* The parties to the Arco subcase then *stipulated* to the "municipal" purpose of use through a *Standard Form 5*. *See* Ex. F to *Second Thompson Aff.* The subcase is clearly distinguishable since it did not involve a previously *licensed* irrigation water right. Moreover, here the respondents and

IDWR do not agree that Pocatello's use is "municipal". No SF5s have been entered into stipulating to the use Pocatello believes it makes. Finally, the Court in the Arco subcase found that "'municipal' water rights encompass a broad range of uses to which such water rights are used for the benefit of the municipality's inhabitants." *See Subcase 34-0030 Report* at 2. This statement further describes Arco's "municipal" water right, nothing more. It does not, as Pocatello implies, create a rule of law that any water rights owned by a city, including licensed irrigation water rights, somehow become "municipal" water rights in the SRBA. It is well established that cities can own irrigation water right rights. *See Ex. D to Thompson Aff.*

C. Pocatello Has Failed to Provide Any Facts Demonstrating an Accomplished Transfer for Its Licensed Irrigation Water Rights.

Pocatello alleges in a footnote that the "actual pre-SRBA use was municipal for water rights #29-7118, #29-7119, #29-7431, and #29-7770" and that under I.C. § 42-1425 the Court "can decree this actual use without collaterally attacking the licenses." *Pocatello Br.* at 6, n. 14. Although Pocatello insinuates an "accomplished transfer" argument as to the purpose of use for its water rights (without any supporting information), its own alleged facts admit no other use other than irrigation:

1. Water right 29-7118 always has been used . . . to manage . . . municipal land . . . ;
2. Water right 29-7119 always has been used . . . to manage . . . municipal land . . . ;
3. Water right 29-7770 always has been used . . . for the land application . . . ;
4. Water right 29-7431 always has been used . . . to apply effluent from the City's wastewater treatment plant to land . . . ;

See Pocatello Br. at 3, 4.

The terms "manage land" and "land application" are simply another way to describe "irrigation use". Moreover, the terms "manage land" and "land application" are not recognized

“purposes of use” for water rights. *See* Ex. G to *Second Thompson Aff.* (List of “Water Uses” used by IDWR, “manage the land” and “land application” as not listed as a recognized purpose of use). Regardless, Pocatello does not claim that it actually used the water under these licensed water rights for any “residential, commercial, industrial, or other related purposes”. Finally, Idaho Code § 42-1425 only applies to a change of place of use, point of diversion, nature or purpose of use, or period of use. *See* I.C. § 42-1425(2). Pocatello has not made any showing of any change of the water rights at issue. The fact that Pocatello derives benefits from irrigation does not change the fact that the water rights are used for irrigation as previously licensed. There being no showing of a change in the nature or purpose of use, Pocatello cannot rely upon Idaho Code § 42-1425 in order to obtain approval of an accomplished transfer.

Accordingly, assuming the above facts are undisputed, they do not support Pocatello’s theory to change its licensed irrigation water rights into municipal water rights as a matter of law. Just the opposite, they support the Coalition’s motion and the dismissal of Pocatello’s objections to the same.

In addition, the facts in these subcases reveal quite a different story than that claimed in Pocatello’s summary judgment motion. First, all of the licensed water rights were originally claimed as “irrigation” water rights by Pocatello in 1990. *See* Exs. G.1, G.2, M, and R to *Thompson Aff.* If the use being made prior to 1987 was “municipal” one would have expected Pocatello to claim that use in 1990. Moreover, with respect to water right #29-7770, Pocatello submitted proof of beneficial use on April 5, 1990, swearing to the “irrigation” of 286 acres as the extent of use of the water right. *See* Ex. Q to *Thompson Aff.* These sworn statements made on behalf of Pocatello contradict the facts alleged in its summary judgment motion.

In summary, Pocatello fails to identify any legal basis for its summary judgment claim that licensed irrigation water rights can transform into municipal water rights by way of the SRBA. Pocatello readily accepted these licenses when they were issued by IDWR in 1975, 1987, and 2003. The licenses identify an “irrigation” purpose of use and are binding upon Pocatello. The fact that Pocatello uses the water for irrigation “in its capacity and function as a municipality” and that it “benefits the inhabitants of Pocatello” does not change the water rights’ licensed purpose of use. Pocatello cannot use the SRBA as an “end-around” the licensing proceeding before IDWR. The Court should deny Pocatello’s motion regarding “municipal” purpose of use.

III. Pocatello’s Summary Judgment Request Relative to “Interconnection” is Moot.

Pocatello’s second request for summary judgment seeks a ruling as a matter of law that “Mink Creek, Gibson Jack Creek, the LPRVA,⁴ the ESPA, and the Snake River [are] interconnected sources of water.” *Pocatello Br.* at 18. This request is moot. Since Pocatello’s “separate streams” objections have been dismissed with prejudice, the general “connected sources” provision established by the Presiding Judge in the *Basin-Wide 5* proceedings applies to Pocatello’s water rights. *See* Ex. A to *Second Thompson Aff.* In other words, there is nothing for this Court to decide on that issue.

The Idaho Supreme Court has held that an issue becomes moot when “the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome,” or if the issue “presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome.” *Idaho Schools for Equal Educational Opportunity v. Idaho State Board of Education*, 128 Idaho 276, 281 (1996). Pocatello’s “interconnection” issue is no longer “live” given the general provision that will apply to its partial decrees. Moreover, any summary

⁴ See below for a discussion regarding the Coalition’s objection to Pocatello’s continued use of this phrase.

judgment decision by this Court on the issue “will have no practical effect upon the outcome.”

Any decision that the waters in Basin 29 are “interconnected” will not change the “connected sources” general provision decreed by the Presiding Judge. Accordingly, such a decision will have no practical effect upon Pocatello’s water rights and therefore is moot.

Finally, even if this Court were to grant Pocatello’s motion as to this point, Pocatello would not receive the benefit it seeks. A determination by this Court that these water sources are interconnected does not mean that Pocatello can unilaterally change the points of diversion for certain water rights (#29-271, #29-272, #29-273, #29-4222) from surface water to groundwater sources. Pocatello cannot use the SRBA as a way to evade the requirement to file an application for transfer with IDWR pursuant to I.C. § 42-222. For the reasons described above, Pocatello’s motion regarding the “interconnected” issue is moot and therefore should be denied.

A. Pocatello’s Mink Creek and Gibson Jack Creek Surface Water Rights are not Interconnected to the Extent that the Points of Diversion can be Transferred to Groundwater Wells Via an SRBA Objection.

The Coalition rejects Pocatello’s attempts to unduly expand the scope of the *706 Report* as it relates to interconnectedness in Basin 29. While the report clearly indicates that the surface water and groundwater sources in Basin 29 are interconnected, such an admission does not mean that surface water right can simply be transformed into groundwater rights. Accordingly, the Coalition denied any attempt by Pocatello to expand the scope of its surface water rights via answers to interrogatories and requests for admission.

Any attempt to divert surface water rights through groundwater wells implicates a number of potential issues which cannot be addressed through discovery requests. The Coalition’s response addresses some of these issues:

The claimant has not provided any information to support its objection that these surface water rights are sufficiently interconnected with an aquifer nor

has the claimant provided any information on the effects of the timing or time lags of flow in the aquifer on water availability to allow the right to be converted to a ground water right and diverted through Pocatello's system of municipal wells. Surface water has not been diverted to ground water under a right to recapture it from a well. Water from the creeks in question that seeps into the ground becomes ground water that was subject to appropriation and any senior water rights to the ground water and surface water to which the ground water flows.

See SWC Response to Pocatello's Discovery Requests at 4; Ex. E to *Angell Aff.*

Pocatello asserts that the Coalition was evasive in its answers relative to the alleged interconnectedness of these water rights. In fact, this is incorrect. It is unclear what exactly Pocatello means when it uses the phrase "interconnected." Given Pocatello's attempt to expand the scope of the *706 Report* by allowing the diversion of surface water rights via groundwater wells, apparently Pocatello's definition of "interconnected" is much broader than that used by this Court and understood by the Coalition. Thus, "It is impossible to determine what Pocatello means by the term." *See id.* at 5; Ex. E to *Angell Aff.*

The Coalition objects to Pocatello's use of the term "Lower Portneuf River Valley Aquifer" ("LPRVA") as though it were a commonly recognized name for a separately defined groundwater source in Basin 29. Such a term, when used as liberally as Pocatello, could arguably depict a water source that is hydrologically independent from the Eastern Snake Plain Aquifer ("ESPA"). Yet, Pocatello provides no evidence support such a contention. In fact, to the best of the Coalition's knowledge, the term "has not been used by any other recognized water resource agency." SWC Response to Pocatello's Discovery Requests at 5; Ex. E to *Angell Aff.*

Pocatello's response to the Coalition's objection is confusing and without merit. First, Pocatello counters by citing to reports prepared by private consulting firms, *Pocatello Br.* at 11 n.39, reports prepared for other state and federal agencies (none of which are alleged to have any authority involving water), *id.* at n.40, and to the website of a certain environmental group, *id.* at

n.41. Recognition by these entities does not constitute recognition by IDWR or a water district that the aquifer underlying Pocatello is a separate hydrologic feature from the ESPA. In fact, with all its citations to the *706 Report* regarding interconnectedness and the aquifer, Pocatello fails to show that the Department or the Director have ever acknowledged this term.

Pocatello further contends that “the SWC’s own expert report acknowledges the LPRVA.” *Pocatello Br.* at 13. Such an assertion is a blatant mischaracterization of the Coalition’s rebuttal expert report (“Rebuttal Report”). In fact, instead of acknowledging the LPRVA, the Rebuttal Report reinforces the fact that the phrase “Lower Portneuf River Aquifer” is not a recognized term:

The designation of the aquifer underlying the Portneuf river at Pocatello and downstream as the “Lower Portneuf River Valley Aquifer” by Welhan in the July 2006 report⁵ and earlier reports and by Sullivan in the Spronk Water Engineers September 29, 2006 report *is apparently for geographic definition only and not to define this region of the aquifer as independent hydrologically from the [ESPA] and the Snake River.*

See Rebuttal Report at 3; Ex. C to *Angell Aff.* (emphasis added). Any attempt by Pocatello to construe this language in the Rebuttal Report as an admission by the Coalition is wrong.

The Coalition has rejected Pocatello’s attempt to expand the findings of the *706 Report* and to ignore established IDWR procedures. Now, Pocatello is attempting to fill the legal and factual gaps in its objections by construing the Coalition’s responses as legally insufficient – and therefore, admissions. In fact, its objections are legally and factually unsupportable. Therefore, Pocatello’s motion should be denied.

⁵ This Wehlen report is the same report cited to by Pocatello as support for its contention that the LPRVA is a recognized term. *Pocatello Br.* at 11 n.40.

IV. Summary Judgment on the 42-1425 “Injury” Question Was Already Denied and Remanded For Proceedings Before IDWR.

Finally, Pocatello seeks summary judgment that there is no 42-1425 injury to other water rights by reason of Pocatello’s operation of alternate points of diversion for its interconnected culinary system. Pocatello essentially reargues its first summary judgment that was denied by the Court’s *Order on Summary Judgment* issued August 18, 2006. In that decision the Court found:

However, construing the language in favor of the non moving party shows that it addresses actual injury. The injury IDWR discusses is to the priority of rights on a given source. Injury to a water right would occur when another right takes precedence. . . . *The 706 Report raises genuine issues of material fact on the injury issue.* Therefore, this Special Master declines to strike the condition under the summary judgment standard.

* * *

Whether IDWR’s conclusion on injury is correct is a matter for trial.

Order at 5, 6 (emphasis added).

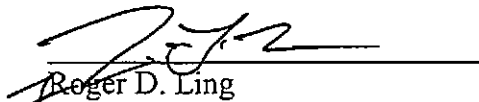
Given the Court’s prior decision, Pocatello’s present motion is barred and should be denied. Consistent with the language of 42-1425, the subcases were remanded to IDWR with the Court retaining concurrent jurisdiction. Neither IDWR nor Pocatello has provided any information that these additional proceedings have occurred or are likely to occur in the near future. In other words, the additional conclusions that the Court required IDWR to make with respect to the 42-1425 injury question have not been made (to the best of the Coalition’s knowledge). The Court has already decided this issue and determined summary judgment was not appropriate. The Court’s prior order on this issue requires a denial Pocatello’s motion on the “injury” question, again.

CONCLUSION

Pocatello's motion for summary judgment fails as a matter of law. As outlined above, the facts Pocatello offers are not "undisputed." Next, Pocatello fails to offer any supporting legal authority for its motion. Pocatello cannot transform licensed irrigation water rights into municipal water rights through the SRBA. Finally, the "interconnected" issue and the 42-1425 "injury" issue have already been decided by the Presiding Judge in the *Basin-Wide 5* proceedings and this Court through the first summary judgment order. The Court should deny Pocatello's motion.

Dated this 12th day of December, 2006.


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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2006, I served a true and correct copy of the foregoing SURFACE WATER COALITION'S REPOSE TO POCATELLO'S SUMMARY JUDGMENT MOTION ON MUNICIPAL PURPOSE OF USE, INTERCONNECTION & INJURY UNDER I.C. § 42-1425 on the person(s) listed below, in the manner indicated:

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☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for United States of America


Travis L. Thompson

EXHIBIT A

Subcase Nos.:

- 29-00271
- 29-00272
- 29-00273
- 29-07118
- 29-07119
- 29-07431
- 29-07770

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39567

Subcase Nos.: (see attached Exhibit A)

SECOND AFFIDAVIT OF TRAVIS L. THOMPSON

STATE OF IDAHO

County of Twin Falls

22.

TRAVIS L. THOMPSON, being first duly sworn upon oath, deposes and hereby states as follows:

1. I am an attorney representing Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge. All documents referenced below were retrieved from the Idaho Department of Water Resources, the SRBA Court, or from the exhibits attached to *Supplemental Director's Report Regarding City of Pocatello's Basin 29 State-Based Water Rights*.

2. Attached hereto as Exhibit A is a true and correct copy of the Presiding Judge's *Memorandum Decision and Order of Partial Decree* and attached exhibit issued in subcase no. 9I-00005 on February 27, 2002.

3. Attached hereto as Exhibit B is a true and correct copy of the water right license issued for water right #29-07770.

4. Attached hereto as Exhibit C is a true and correct copy of the application for permit for water right #29-07770.

5. Attached hereto as Exhibit D are true and correct copies of the water right license #01-07099 held by the City of Burley for "irrigation" purposes; water right license #47-08180 held by the City of Twin Falls for "commercial" purposes; water right license #27-07385 held by the City of Blackfoot for "irrigation" purposes; and water right license #01-2049 held by the City of Idaho Falls for "power" purposes.

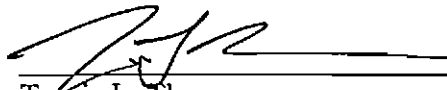
6. Attached hereto as Exhibit E is a true and correct copy of the Director's Report for water right #34-10030.

7. Attached hereto as Exhibit F is a true and correct copy of the *Standard Form 5* filed in subcase no. 34-10030.

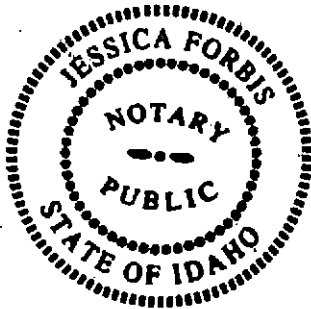
8. Attached hereto as Exhibit G is a true and correct copy of IDWR's "Water Use Code" list.

Further you affiant sayeth nought.

DATED this 12th day of December, 2006.


Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 12 day of December, 2006.





Notary Public for State of Idaho
Residing at Twin Falls, Idaho.
Commission Expires: 4/3/12

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-07118
29-07119
29-07431
29-07770

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December, 2006, I served the foregoing SECOND AFFIDAVIT OF TRAVIS L. THOMPSON upon the following:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Josephine P. Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Attorneys for City of Pocatello

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 16th Street, Suite 500
Denver, CO 80202

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Attorneys for City of Pocatello

David Barber
Natural Resources Division
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Attorneys for State of Idaho

Environment & Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for United States of America


Travis L. Thompson

Exhibit A

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase 91-00005
)	
Case No. 39576	)	BASIN WIDE ISSUE NO. 5
)	
	)	CONNECTED SOURCES GENERAL
	)	PROVISION (Conjunctive Management)
)	
	)	MEMORANDUM DECISION AND ORDER
	)	OF PARTIAL DECREE
)	

I. SETTLEMENT OF ISSUES

On August 27, 2001, the participating parties to Basin-Wide Issue 5 (hereinafter "Parties") filed a *Settlement Agreement and Stipulation for Entry of Agreed Findings of Fact, Conclusions of Law, and Partial Judgment on Basin-Wide Issue 5* ("*Stipulation*").¹ The Idaho Department of Water Resources ("IDWR") concurred with the *Stipulation*. As a result, the Court vacated the September 24, 2001, trial date. In the *Stipulation*, the Parties agreed to the form of the conjunctive management general provision to be used by IDWR in submitting Director's Reports within each basin, and to be used by the Court in issuing a partial decree for conjunctive management within each basin. A copy of the form of the conjunctive management general provision stipulated to by the Parties is attached hereto as "Exhibit A."

On August 30, 2001, this Court issued an *Order to Show Cause Why General Provision Should Not Be Partially Decreed In Accordance With Stipulation of the Parties* ("*Order to Show Cause*"). The *Order to Show Cause* was heard in open court on December 18, 2001, at the Snake River Basin Courthouse in Twin Falls, Idaho. On December 19, 2001, this Court issued a *First Order Re: Order to Show Cause* ("*First Order*"). The *First Order* precluded all parties to Basin-Wide Issue 5, and all parties to the Snake River Basin Adjudication, with the

¹ The United States did not sign the *Stipulation*.

exception of the United States, from asserting that this Court should not enter the general provision in the manner set forth in the *Stipulation*.

On December 31, 2001, pursuant to the schedule set forth in the *First Order*, the United States filed a *Motion for Clarification*, together with a memorandum in support thereof. On January 11, 2002, the State of Idaho, Twin Falls Canal Company, *et al.*, Pioneer Irrigation District *et al.*, the North Snake Ground Water District, and the Aberdeen-American Falls Ground Water District, *et al.*, filed or joined in objections to the United States' *Motion*. Oral argument on the United States' *Motion* was heard in open court on January 22, 2002.

On February 27, 2002, this Court issued an *Order on United States' Motion for Clarification (Second Order Re: Order to Show Cause)*, addressing the issues concerning the general provision raised by the United States. The United States' *Motion* was ultimately denied.

II. REVIEW AND ACCEPTANCE OF AGREEMENT BY THE COURT

A. ROLE OF COURT.

Although the agreement reached by the parties represents final settlement of all pending issues, the Court is still charged with the duty of reviewing the contents of the agreement to ensure compliance with the law. In other words, the Court is not required to "rubberstamp" either the recommendations contained in the director's report or any agreement reached by the parties to the extent they are contrary to law. *State v. United States*, 128 Idaho 246, 258-59, 912 P.2d 614, 626-27 (1995). The Court's role however, is somewhat limited because a trial was not conducted on the merits and the Court is not required by statute to conduct an evidentiary hearing in order to accept a stipulation as final resolution. *Memorandum Decision and Order on Challenge*, subcases 36-00061, *et al.* (Sept. 27, 1999) ("*Morris*") at 17. Thus, the Court's review is limited to the existing record.

B. APPLICABLE LAW.

1. Evidentiary Value of Director's Report and/or Agreement of the Parties.

Idaho Code § 42-1411(4) provides that the filing of the director's report shall "constitute prima facie evidence of the nature and extent of the water rights . . ." I.C. § 42-1411(4) (2000). Additionally, as applied to settlement agreements, IDWR's role in the SRBA "is an independent

expert and technical assistant [who] assure[s] that claims to water rights acquired under state law are accurately reported” I.C. § 42-1401B(1) (1996). Therefore, when IDWR’s representative signs a *Standard Form 5* or otherwise signs off on an agreement and states that its contents are true, IDWR’s concurrence provides evidentiary value on which the Court is entitled to rely. *Morris* at 14.

2. Legal Authority and the Basis for General Provisions.

Idaho Code § 42-1411 provides that the director of IDWR shall prepare a report on the water system. “The director may include such general provisions in the director’s report, as the director deems appropriate and proper, to define and administer all water rights.” I.C. § 42-1411 (2000). “The decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights.” I.C. § 42-1412(6). In *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998), the Idaho Supreme Court stated:

A general provision is a provision that is included in a water right decree regarding the administration of water rights that applies generally to water rights, is not an element of the water right, or is necessary for the efficient administration of the water rights decreed. A general provision is an administrative provision that generally applies to water rights but it need not apply to every water right.

Id. at 421, 958 P.2d at 578 (citations omitted).

The avoidance of potential controversy in the administration of water rights promotes the efficient administration of water rights and can be a valid basis for a general provision. In *State v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), the Idaho Supreme Court held that notifying water right holders as to how their rights will be administered in order to avoid future controversy among water right holders is consistent with the efficient administration of a water right and as such can be a justification for a general provision. *Id.* at 334-35, 955 P.2d at 1113-14. Defining the legal as well as the hydrologic relationship between ground and surface water rights can also be the valid basis for a general provision. In *A & B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 422, 958 P.2d 568, 579 (1997), the Idaho Supreme Court acknowledged that to conjunctively manage ground and surface water rights a good understanding of both the hydrological and legal relationship between ground and surface rights

is necessary and that such issues may need to be resolved by administrative general provisions.
Id.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Based upon the record in this subcase, including the December 30, 1999, *Supplemental Director's Report to the SRBA District Court*, the February 24, 2000, evidentiary hearing, and IDWR's concurrence in the *Stipulation*, and the Court's prior analysis regarding the necessity for a general provision on connected ground and surface sources in the Snake River Basin contained in the July 2, 2001, *Order on Cross-Motions for Summary Judgment; Order on Motions to Strike Affidavits*, the Court makes the following findings of fact and conclusions of law:

1. The Court finds that all parties to the SRBA, as defined by *SRBA Administrative Order 1*, 2q., were provided notice of the proceedings on Basin-Wide Issue 5 and were given the opportunity to be heard in the proceedings concerning Basin-Wide Issue 5.

2. The Court finds that a general provision on connected ground and surface sources is necessary to define the water rights decreed by the SRBA District Court by identifying hydraulically connected ground and surface sources for the purposes of administration and defining the legal relationship between connected sources.

3. The Court finds that a general provision on connected ground and surface sources is necessary to efficiently administer the water rights decreed by the SRBA District Court by notifying water right holders as to how their rights will be administered in order to avoid future controversy in the administration of such rights.

4. The Court concludes, as a matter of law, that a general provision on connected ground and surface sources is necessary to define the water rights decreed by the SRBA District Court by identifying hydraulically connected ground and surface sources for the purposes of administration and defining the legal relationship between connected sources.

5. The Court concludes, as a matter of law, that a general provision on connected ground and surface sources is necessary to efficiently administer the water rights decreed by the SRBA District Court by notifying water right holders as to how their rights will be administered in order to avoid future controversy in the administration of such rights.

6. The Court concludes, as a matter of law, that the form and content of general provision on connected ground and surface sources as stipulated by the parties, and concurred with by the Idaho Department of Water Resources, is not contrary to established law. *State v. United States*, 128 Idaho 246, 258-59, 912 P.2d 614, 626-27 (1995).

III. ORDER

Based on the foregoing, the form of the conjunctive management general provision is hereby decreed as set forth in the attached "Exhibit A."

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

IT IS SO ORDERED.

DATED: _____

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE FOR CONNECTED
Case No. 39576) SOURCES IN BASIN ____
) (Conjunctive Management General Provision)

The following water rights from the following sources of water in Basin 36 shall be administered separately from all other water rights in Basin ____ in accordance with the prior appropriation doctrine as established by Idaho law:

<u>Water Right No.</u>	<u>Source</u>
------------------------	---------------

The following water rights from the following sources of water in Basin ____ shall be administered separately from all other water rights in the Snake River Basin in accordance with the prior appropriate doctrine as established by Idaho law:

<u>Water Right No.</u>	<u>Source</u>
------------------------	---------------

Except as otherwise specified above, all other water rights within Basin ____ will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does

hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated _____.

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

Exhibit B

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 29-07770

Priority: May 21, 1984

Maximum Diversion Rate: 4.46 CFS
Maximum Diversion Volume: 1,120.0 AF

It is hereby certified that CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated May 21, 1984; and has
submitted Proof of Beneficial Use on March 16, 1990. An examination indicates that the works have a
diversion capacity of 4.46 cfs of water from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
IRRIGATION	4/01 to 10/31	4.46 CFS	1,120.0 AF

LOCATION OF POINT OF DIVERSION:

GROUND WATER NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12, Twp 06S, Rge 33E, B.M., POWER County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06S 33E 1															5.0		5.0
06S 33E 12	27.0	40.0	40.0	40.0	40.0			40.0	25.0				7.0	15.0			275.0
Total Acres: 280																	

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
2. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 2ND day of JANUARY, 2003.

MICROFILMED

JAN 09 2003

Acting for 
KARL J. DREHER
Director

3548

SCANNED

Exhibit C

May 10, 1984

Ident. No. 29-7770

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant City of Pocatello Phone (208) 232-4311 ext. 175
Post office address P. O. Box 4169 Pocatello, ID 83205
2. Source of water supply ground water which is a tributary of _____
3. Location of point of diversion is S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ of Section 12 Township 6 S.
Range 33 E. B.M. _____ Power _____ County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

- Amount 5.72 for irrigation purposes from April 1 to Oct. 15 (both dates inclusive)
(cfs or acre-feet per annum)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

- a. 5.72 cubic feet per second and/or b. _____ acre-feet per annum.
6.7

6. Proposed diverting works:

- a. Description of ditches, flumes, pumps, headgates, etc. 20" diameter deep well with appropriate vertical turbine pump and motor to pump 6.7 cfs. various sizes of irrigation mainline to accommodate flow.
- b. Height of storage dam N/A feet, active reservoir capacity N/A acre-feet; total reservoir capacity N/A acre-feet, materials used in storage dam: N/A
Period of year when water will be diverted to storage N/A to N/A inclusive.
(Month/Day) (Month/Day)
- c. Proposed well diameter is 20 inches; proposed depth of well is 300 feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 years (minimum 1 year - maximum 5 years).

8. Description of proposed uses:

- a. If water is not for irrigation:
- (1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M. _____
- (2) Amount of power to be generated: _____ horsepower under _____ feet of head.
- (3) List number of each kind of livestock to be watered _____
- (4) Name of municipality to be served _____ or number of families to be supplied with domestic water _____
- (5) If water is to be used for other purposes describe: _____

RECEIVED

DEC 14 1989

3550

n. If water is for irrigation indicate acreage in each subdivision in the tabulation below:

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6S.	33 E.	12	40	40	40	25	40			40	25				3	15			268
6S.	33 E.	1															9	9	18

Total number of acres to be irrigated 286

c. Describe any other water rights used for the same purposes as described above. None

9. a. Who owns the property at the point of diversion City of Pocatello

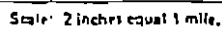
b. Who owns the land to be irrigated or place of use City of Pocatello

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing N/A

10. Remarks This permit is being requested so that a well can be drilled on City owned property to supply irrigation water for a 280 acre farming operation at the City's proposed sludge management site.. Treated sludge from the City's wastewater treatment facility will be stored during the winter months, then dried during the summer months and applied to the farm land as fertilizer and soil conditioner. Water from the well will be necessary to irrigate the various yearly crops. All surface water runoff will be retained on the site.

Change
as per
letter
11/6/87
10-17-89

See Attached USGS Map



RECEIVED

John P. Patterson
(Applicant)
Director of Public Works

252

Exhibit D

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 47-08180

Priority: December 12, 1988

Maximum Diversion Rate: 0.06 CFS
Maximum Diversion Volume: 2.0 AF

It is hereby certified that CITY OF TWIN FALLS
PO BOX 1907
TWIN FALLS ID 83301-1907 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated December 12, 1988; and has
submitted Proof of Beneficial Use on July 25, 1989. An examination indicates that the works have a
diversion capacity of 0.06 cfs of water from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
COMMERCIAL	03/01 to 10/31	0.06 CFS	2.0 AF

LOCATION OF POINT OF DIVERSION:

GROUND WATER NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 7, Twp 11S, Rge 17E, B.M., TWIN FALLS County

PLACE OF USE: COMMERCIAL

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
11S 17E 7				X													

CONDITIONS OF APPROVAL

1. Commercial Use is for a racetrack with restrooms and concession stand.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 2nd day of December, 2004.


for KARL J. DREHER
Director

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 01-07099

Priority: June 20, 1989

Maximum Diversion Rate: 1.19 CFS
Maximum Diversion Volume: 288.0 AF

This is to certify, that CITY OF BURLEY

PO BOX 1090

BURLEY ID 83318

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 20, 1989; and has submitted Proof of Beneficial Use on April 19, 1990. An examination indicates that the works have a diversion capacity of 1.190 cfs of water from:

SNAKE RIVER

tributary to COLUMBIA RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/15	1.19 CFS	288.0 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 2(NENE), Sec. 21, Township 10S, Range 23E
CASSIA County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
10S	23E	21	NWNE 10	SWNE 19.5	NENW 3.7	
			SWNW 6	SENW 27	NESW 9	
			NWSE 9			84.2

Total number of acres irrigated: 84.2

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right limited to the amount that can actually be beneficially use used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.

MINORITY WED

JAN 21 1993

3355

WATER RIGHT LICENSE

WATER RIGHT NO. 01-07099

CONDITIONS/REMARKS:

5. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
6. The Director retains jurisdiction of the right and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
7. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.
8. Use of water under this water right will be regulated by the watermaster of State Water District No. 01.
9. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.
10. Water shall not be diverted under this right until supplemental storage water in the amount of 288 acre-feet, comprised of yield from storage owned or storage rented, has been obtained from the upper Snake River water supply bank.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 24TH day of DECEMBER, 1992.

Acting for R. Keith Higginson, Director

NOTIFIED

JAN 21 1993

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 27-07385

Priority: November 30, 1983

Maximum Diversion Rate:

1.32 CFS

Maximum Diversion Volume:

264.0 AF

This is to certify, that CITY OF BLACKFOOT

157 N BROADWAY

BLACKFOOT ID 83221

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated November 30, 1983; and has submitted Proof of Beneficial Use on April 27, 1990. An examination indicates that the works have a diversion capacity of 1.870 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
-----------------------	----------------------	--------------------------	----------------------

IRRIGATION	04/01 to 10/31	1.32 CFS	264.0 AF
------------	----------------	----------	----------

LOCATION OF POINT(S) OF DIVERSION: Lot 9 (SWNE), Sec. 27, Township 02S, Range 35E
BINGHAM County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
02S	35E	26	NENW 2	Lot 1 (NWNW) 13		15
		27	Lot 8 (NENE) 7	Lot 9 (SWNE) 13	Lot 5 (SENE) 31	51

Total number of acres irrigated: 66

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
6. The Director retains jurisdiction of the right to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.

AUG 12 1997

3557

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 27-07385

CONDITIONS OF APPROVAL AND REMARKS

7. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 30TH day of JUNE, 1997.


Acting for KARL J. DREHER, Director



MICROFILMED
AUG 12 1997

3558

State of Idaho
License and Certificate of Water Right

Water License No. 18271

Amount 1500 second feet

Water District No.

Priority February 14, 1936

THIS IS TO CERTIFY that CITY OF IDAHO FALLS
of Idaho Falls, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated February 14, 1936; that Permit No. 18271
was issued under said application; that Certificate of Completion of works, with a carrying capacity of
1500 second feet, was issued thereunder on March 14, 1939, showing that said works
were completed on the 21st day of May, 1937; and that on the 21st
day of May, 1937.

CITY OF IDAHO FALLS

of Idaho Falls, State of Idaho, made proof to the satisfaction of the
Commissioner of Reclamation of Idaho, of the right to use the waters of Snake River
a tributary of Columbia River, for the purpose of power
under Use Permit No. 18271 of the Commissioner of Reclamation
and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is
hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7
of Licenses, at page 3940, on the 14th day of March, 1939;

The right hereby confirmed dates from February 18, 1936;

The Point of Diversion is located S. 62° 45' E. 550.5 ft. distant from N. $\frac{1}{2}$ cor. Sec. 36, T. 3 N.,
R. 37 E., B.M. in Lot 7 of Sec. 36, T. 3 N., R. 37 E., B.M. Bonneville County

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid,
is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1500
cubic feet per second.

Description and location of user.

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			Point of use of water: S. 62° 45' E. 550.5 feet distant from the N. $\frac{1}{2}$ corner of Section 36, Township 3 North, Range 37 East, B.M. (Upper Plant)	in Lot 7 of Section 36, Township 3 North, Range 37 East, B.M.	

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use
herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho,
this 14th day of March, 1939

JAMES SPOFFORD

Commissioner of Reclamation

(Seal)

01-3539

Exhibit E

SRBA

DIRECTORS REPORT 34-10030

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Return to SRBA Home Page

IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 34-10030

Name and Address: CITY OF ARCO
PO BOX 196
ARCO, ID 83213

Source: GROUNDWATER

Quantity: 2.12 CFS

Priority Date: 06-01-1962

Diversion Point: T04N R26E S36 SWSWNE Within Butte County

Purpose and

Period of Use:	Purpose of Use	Period of Use	Quantity
	Municipal	01-01 TO 12-31	2.12 CFS
			250.00 AFY

Place of Use: See remarks

Place of Use: Municipal
Same as Other Use

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Beneficial Use

KNOWN AS "CITY PARK WELL"

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF ARCO.

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[Return to SRBA Home Page](#)

Exhibit F

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DEC 16 1994

DISTRICT COURT - SRBA
COUNTY OF IDAHO
TWIN FALLS

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	STANDARD FORM 5
)	
Case No. 39576	)	SUBCASE NO: 34-10030
)	
)	
	)	PROPOSED ELEMENTS OF A
	)	WATER RIGHT

This form is used to report the proposed elements of one federal reserved water right or one water right acquired under state law. Submission of this form will not result in the automatic issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; and they have been served with sufficient process, according to the law, and have appeared, prosecuted and defended their positions with regard to this water right dispute.

Instructions For Use

A copy of this water right as recommended in the director's report shall be submitted with this form. A statement shall accompany each element of a water right.

Elements where there has been no objection should be listed exactly as they appear in the director's report. The statement as to an uncontested element shall state "as recommended in the director's report."

Contested elements that are the result of an objection filed with the court shall be accompanied by a statement fully describing all facts, documents, expert opinions and law which support the element of the water right (attach additional pages if necessary).

1. The name and address of the claimant is:

CITY OF ARCO
PO BOX 196
ARCO ID 83213

Required Statement: As recommended in the director's report.

2. The source of water is: GROUNDWATER

Required Statement: As recommended in the director's report.

3. The quantity of water used in cubic feet per second or the quantity of water stored in acre-feet per year is:

MUNICIPAL	2.12	CFS
TOTAL QUANTITY:	2.12	CFS

Required Statement: IDWR and the parties stipulate that this is the correct description of the quantity of water.

4. The priority date is: 06/01/1962

Required Statement: As recommended in the director's report.

5. The legal description of the point(s) of diversion is; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow:

T04N R26E S36 SWSWNE

KNOWN AS "CITY PARK WELL"

Required Statement: As recommended in the director's report. The claim is not for an instream flow.

6. The purpose of use is: MUNICIPAL

Required Statement: As recommended in the director's report.

7. The period of year when the water is to be used is:

MUNICIPAL 01-01 to 12-31

Required Statement: As recommended in the director's report.

8. The legal description of the place of use or of the reservation is:

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF ARCO.

Required Statement: As recommended in the director's report. The place of use is located in Butte County, Idaho.

9. The annual volume of consumptive use is: 250.0 AFY

Required Statement: Annual volume of consumptive use was erroneously shown as a diversion volume in the director's report.

10. Other matters necessary to define this water right: Not applicable.

These matters are necessary because: Not applicable.

These matters do not fall within the 9 elements listed above because: Not applicable.

3- 1-95 11:27 :A

Signature and Address of Parties and their Attorney of Record

I have read this form and know its contents and that the statements are true to the best of my knowledge and belief.

Name: City of Arco

Address: 525 Park Ave., Ste. 2A

City/State/Zip: Idaho Falls, ID 83402

Attorney of Record: Ryan Boyer


Attorney's Signature

3/13/95

Date

Name: Idaho Dept. of Water Resources

Address: P.O. Box 83720

City/State/Zip: Boise, ID 83720-0098

Attorney of Record: Susan E. Hamlin


Attorney's Signature

3-15-95

Date

Name: City of Pocatello

Address: P.O. Box 829

City/State/Zip: Boise, ID 83701

Attorney of Record: Josephine P. Beeman


Attorney's Signature

3-2-95

Date

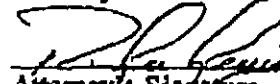
Name: United States through

Address: Department of Justice of BLM

601 Pennsylvania Ave. NW

City/State: Washington, DC 20004

Attorney of Record: R. Lee Leininger


Attorney's Signature

3-1-95

Date

Court Representative (if necessary)

Date

INSTRUCTIONS FOR MAILING

You must mail the form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. FAX filings will not be accepted by the SRBA Clerk of the Court.

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on March 15, 1995, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

Department of Justice
550 West Fort Street, Box 33
Boise, ID 83724-0663

City of Arco
525 Park Ave., Ste. 2A
Idaho Falls, ID 83402

City of Pocatello
P.O. Box 829
Boise, ID 83701



Signature of person or attorney mailing the form

Exhibit G

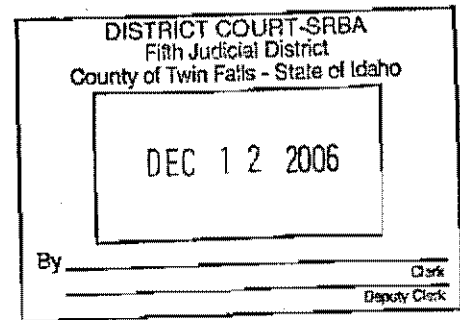
Water Use Code	Short Description	Long Description
01	IRR	IRRIGATION
02	IRR S	IRRIGATION STORAGE
03	IRR FS	IRRIGATION FROM STORAGE
04	STOCK	STOCKWATER
05	STOC S	STOCKWATER STORAGE
06	STO FS	STOCKWATER FROM STORAGE
07	INDUST	INDUSTRIAL
08	IND S	INDUSTRIAL STORAGE
09	IND FS	INDUSTRIAL FROM STORAGE
10	COMMER	COMMERCIAL
11	COM S	COMMERCIAL STORAGE
12	COM FS	COMMERCIAL FROM STORAGE
13	MINING	MINING
14	MIN S	MINING STORAGE
15	MIN FS	MINING FROM STORAGE
16	WILDLF	WILDLIFE
17	WILD S	WILDLIFE STORAGE
18	WLD FS	WILDLIFE FROM STORAGE
19	FISH	FISH PROPAGATION
20	FIS S	FISH PROP. STORAGE
21	FIS FS	FISH PROP. FROM STORAGE
22	HEAT	HEATING
23	HEA S	HEATING STORAGE
24	HEA FS	HEATING FROM STORAGE
25	COOL	COOLING
26	COO S	COOLING STORAGE
27	COO FS	COOLING FROM STORAGE
28	POWER	POWER
29	POW S	POWER STORAGE
30	POW FS	POWER FROM STORAGE
31	WAQ	WATER QUAL. IMPROVEMENT
32	WAQ S	WATER QUAL. IMPR. STOR.
33	WAQ FS	WTR QUAL IMPR FROM STOR
34	MIF	MINIMUM INSTREAM FLOW
35	MIF S	MIN. INSTREAM FLOW STOR
36	MIF FS	MIN. INS. FLOW FROM STOR
37	GWR	GROUNDWATER RECHARGE
38	GWR S	GW RECHARGE STORAGE
39	GWR FS	GW RECHARGE FROM STORAGE
40	MUNI	MUNICIPAL
41	MUN S	MUNICIPAL STORAGE
42	MUN FS	MUNICIPAL FROM STORAGE
43	DOMEST	DOMESTIC
44	DOM S	DOMESTIC STORAGE
45	DOM FS	DOMESTIC FROM STORAGE
46	REC	RECREATION

47	REC S	RECREATION STORAGE
48	REC FS	RECREATION FROM STORAGE
49	FIRE	FIRE PROTECTION
50	FIR S	FIRE PROTECTION STORAGE
51	FIR FS	FIRE PROTECT. FROM STORAGE
52	AES	AESTHETIC
53	AES S	AESTHETIC STORAGE
54	AES FS	AESTHETIC FROM STORAGE
55	DIV S	DIVERSION TO STORAGE
56	LAKELM	LAKE LEVEL MAINTENANCE
57	FLD S	FLOOD CONTROL STORAGE
58	AQ HAB	AQUATIC HABITAT
59	FISHAB	FISH HABITAT
60	WILDRV	WILD AND SCENIC RIVER
61	AVGFLOW	AVERAGE ANNUAL FLOW
62	BNKFLO	BANKFUL FLOW
63	BASFLO	BASE FLOW
64	CHN MN	CHANNEL MAINTENANCE
65	RIP MN	RIPARIAN MAINTENANCE
66	100 YR	100 YEAR FLOOD FLOW
67	MULT	MULTIPLE USE
68	F H ST	FISH HABITAT STORAGE
69	F H FS	FISH HABITAT FROM STORAGE
70	STK IS	STOCKWATER
71	STKSIS	STOCKWATER STORAGE
72	STKFSI	STOCKWATER FROM STORAGE
73	STK NI	STOCKWATER
74	STKSNI	STOCKWATER STORAGE
75	STKFSN	STOCKWATER FROM STORAGE
76	DOM IS	DOMESTIC
77	DOMSIS	DOMESTIC STORAGE
78	DOMFSI	DOMESTIC FROM STORAGE
79	DOM NI	DOMESTIC
80	DOMSNI	DOMESTIC STORAGE
81	DOMFSN	DOMESTIC FROM STORAGE
82	FISHIS	FISH PROPAGATION
83	FISHNI	FISH PROPAGATION
84	DIVSNI	DIVERSION TO STORAGE
85	IRRSNI	IRRIGATION STORAGE
86	IRRSIS	IRRIGATION STORAGE
87	MSF	MINIMUM STREAM FLOW
88	MSF S	MIN. STREAM FLOW STORAGE
89	MSF FS	MIN. STR. FLOW FROM STOR.
99	SEE RK	SEE REMARKS

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Attorneys for City of Pocatello



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
)	
)	
Case No. 39576	)	CITY OF POCATELLO'S RESPONSE BRIEF TO
	)	THE SURFACE WATER COALITION'S MOTION
	)	FOR SUMMARY JUDGMENT
_____)	

INTRODUCTION

Summary judgment is appropriate only "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." I.R.C.P. 56(c). The Surface Water Coalition's (SWC) November 30th *Motion For Summary Judgment* must be dismissed because: (1) The accomplished transfer statute 42-1425 allows Pocatello to confirm changes to its water rights, negating the need to file a transfer under 42-222. This is true whether the change to be confirmed is to purpose of use, place of use, or

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point of diversion; (2) summary judgment of dismissal is inappropriate where Pocatello's SRBA objections raise triable issues as to pre-1987 changes in its water rights and the objections were brought in conformance with applicable SRBA procedure; and (3) further, as a matter of law, IDWR is not estopped to correct its prior errors of law.¹

The SWC's *Memorandum in Support of SWC Motion For Summary Judgment* has numerous inaccurate statements,² which can easily confuse and obfuscate the issue of municipal use. However, it is still undisputed that the purpose of use of Pocatello's water rights is municipal, and therefore the City's motion for summary judgment on purpose of use is appropriate, despite the SWC's confusing rendition of the issues.

I. MUNICIPAL PURPOSE OF USE

A. Pocatello does not need to file for a transfer under Idaho Code § 42-222.

In its *Motion for Summary Judgment*, the SWC alleges that (1) "Pocatello cannot use the SRBA as a way to evade the requirement to file an application for transfer with IDWR under Idaho Code § 42-222" and (2) "Pocatello cannot change its licensed irrigation groundwater and wastewater rights into 'municipal' water rights to be used anywhere in Pocatello's service area."³

These assertions overlook the fact that the SRBA court can appropriately decree a municipal purpose of use because the beneficial use of the right, though initially described as "irrigation," has always been municipal. This is not a "collateral attack" on Pocatello's water rights, but rather an accomplished transfer as provided under Idaho Code § 42-1425. To the

¹ The State and its agencies cannot be estopped by the mistakes of law or fact of its agents. See *Kelso & Irwin, P.A. v. State Ins. Fund*, 134 Idaho 130, 138, 997 P.2d 591, 599 (2000). See also *Sagewillow, Inc. v. Idaho Dept. of Water Resources*, 138 Idaho 831, 845, 70 P.3d 669, 683 (2003).

² These inaccuracies are clearly demonstrated by the SWC's own exhibits. See pages 8, 9, 10, and 12 of this brief for a discussion of the discrepancies between the SWC's exhibits and statements in the SWC *Memorandum in Support of SWC Motion For Summary Judgment*.

³ *Memorandum In Support of SWC Motion For Summary Judgment*, pages 7 and 2.

extent the irrigation purpose of use was an error of law by IDWR, in the licensing process, IDWR is not estopped from correcting that error and recommend the municipal purpose of use to the SRBA court. This is what Pocatello seeks for 29-7770, 29-7431, 29-7118, and 29-7119.

1. Highlands Golf Course: An example of an accomplished transfer of a licensed purpose of use from "irrigation" to "municipal."

The City acquired water right 29-2382 from a private owner to use the water to irrigate the Highland Golf Course in Pocatello. This water right was originally licensed for "irrigation and domestic use" to be used on 320 acres.⁴ On April 19, 1990, Pocatello filed a *Notice of Claim* for this water right which also stated that it was used for the irrigation of 320 acres.⁵ On April 25, 2003, Pocatello filed an *Amended Notice of Claim*, stating the purpose of use for this water right was "municipal."⁶ This accomplished transfer from "irrigation" to "municipal" was reconfirmed in the April 2006 Supplemental Director's Report: "the nature of the use has changed under the accomplished transfer theory from irrigation to municipal use. . . ."⁷ Thus, pursuant to § 42-1425, IDWR has the authority to recommend that the purpose of use for a water right be changed to "municipal" even when it was licensed for "irrigation" and historically used for irrigation.

Pocatello initiated and obtained each of the four "irrigation" licenses for which it seeks municipal purpose of use in the SRBA. It is undisputed that the nature of the use remains

⁴ See *License* within Exhibit G to April 2006 Supplemental Director's Report.

⁵ See *Notice of Claim* within Exhibit G to April 2006 Supplemental Director's Report.

⁶ See *Amended Notice of Claim* within Exhibit G to April 2006 Supplemental Director's Report.

⁷ April 2006 Supplemental Director's Report, page 17. In addition, the July 2003 Director's Report recommendation for 29-2382 stated this water right "[i]ncludes accomplished change in purpose of use pursuant to section 42-1425 Idaho Code. Right includes accomplished change in place of use pursuant to section 42-1425, Idaho Code."

unchanged for each water right. The law supports the same result at the SRBA court for these four rights as for the Highlands Golf Course water right: a municipal purpose of use.

B. Pocatello's objections to the purpose of use for 29-7770, 29-7431, 29-7118, and 29-7119 are based on undisputed facts and supported by Idaho Law. Summary dismissal of these objections is inappropriate.

Pocatello's objections and subsequent motion for summary judgment to confirm the municipal purpose of use for water rights 29-7770, 29-7431, 29-7118, and 29-7119 are appropriate because (despite the SWC's attempts to confuse and obfuscate the purpose of use issue) there are still no genuine issues of fact as to (1) the broad definition of "municipal" purpose of use and (2) whether Pocatello's use of these four water rights fits within this broad definition of "municipal".

1. "Municipal" purpose of use is broadly defined and includes many uses such as irrigation.

Pocatello has four licensed water rights for irrigation which the City claimed as municipal water rights in the SRBA⁸ because each water right "is used by the City in its capacity and function as a municipality."⁹ Idaho Code § 42-202(B)(6) defines "municipal purposes" as:

water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider. (emphasis added)¹⁰

⁸ SRBA claims 29-7118, 29-7119, 29-7770, and 29-7431.

⁹ The quoted language is from Pocatello's SRBA objections to the irrigation purpose of use which IDWR recommended to the SRBA court for 29-7118, 29-7119, 29-7770, and 29-7431.

¹⁰ The actual pre-SRBA use was municipal for 29-7118, 29-7119, 29-7431, and 29-7770. Under 42-1425 the SRBA Court can decree this actual use without collaterally attacking the licenses for 29-7118, 29-7119, 29-7431, and 29-7770. For this reason, Judge Wood's Facility Volume decision is distinguishable.

In 1997, in subcase 34-10030 (City of Arco), Special Master Bilyeu issued a master's report that considered 42-202(B) in light of the common law. The report states that 42-202(B) codifies, but does not limit the common law. The report adopts a broad view of "municipal purpose of use", stating that when used to describe the purpose of use of a water right, "municipal" means:

a right used by a municipality for the benefit of its inhabitants. A 'municipal' right may be used for numerous purposes which benefit the city's inhabitants. The court finds this definition of 'municipal' persuasive and adopts it here. Thus 'municipal' water rights encompass a broad range of uses to which such water rights are used for the benefit of the municipality's inhabitants.

(Emphasis added.)¹¹ Therefore, both statute and common law in Idaho recognize that "municipal" purposes encompass a broad array of uses that can include, but are not limited to, irrigation and requirements for compliance with federal laws.

2. Pocatello's use of 29-7770, 29-7431, 29-7118, and 29-7119 fits within this broad definition of "municipal".

It is undisputed that Pocatello's use of these water rights for irrigation, in order to comply with federal laws, fits within this broad definition of "municipal." In its answers to Pocatello's discovery,¹² the State readily admitted the following facts:

1. A municipal purpose of use "may include multiple uses such (sic) domestic, commercial, and other uses."¹³

¹¹ *In Re SRBA*, subcase 34-10030 Special Master's Report April 8, 1997, at page 2.

¹² In the 76 pages of discovery that Pocatello sent out to the SWC and the State, Pocatello did not ask these specific questions regarding 29-7431. However, Pocatello believes the answers would have been the same had it included 29-7431. Additionally, Pocatello does not contest the April 2006 Supplemental Director's Report findings that 29-7431 "allows the City to apply effluent from its wastewater treatment plant to cropland. . . ." April 2006 Supplemental Director's Report, page 20.

¹³ Request for Admission No. 3, State's Answer to Pocatello's Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello's Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 170.

2. “[A] municipal water right may be used for many uses including irrigation and airport safety.”¹⁴
3. The “primary use” of water right 29-7118 “is to satisfy customer needs within the area served by Pocatello.”¹⁵
4. The water used under water right 29-7119 “is used within the corporate limits of Pocatello.”¹⁶
5. Pocatello uses water right 29-7770 “for the land application of the City’s biosolids under Pocatello’s EPA-approved Biosolids program and NPDES permit . . . ” and this land application of biosolids produced by Pocatello’s waste water plant is performed “as a part of the City’s municipal responsibility to treat and dispose of domestic sewage.”¹⁷
6. Pocatello requested IDWR to license water right 29-7770 as a “municipal” water right and that “Pocatello uses this water rights as part of its obligations as a municipality to treat and dispose of domestic sewage.”¹⁸

In responding to identical discovery questions, and although relying on the same information,¹⁹ the SWC refused to answer the majority of Pocatello’s discovery requests, stating that “[t]he Coalition has made reasonable inquiry and the information known or readily obtainable is

¹⁴ Request for Admission No. 4, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, pages 170, 181.

¹⁵ Request for Admission No. 1, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 168.

¹⁶ Request for Admission No. 1, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 179.

¹⁷ Request for Admission Nos. 1 and 2, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 240.

¹⁸ Request for Admission Nos. 3 and 4, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 241.

¹⁹ The April 2006 Supplemental Director’s Report.

insufficient to admit or deny the request . . .”²⁰ even when the pertinent information was readily available in the April 2006 Supplemental Director’s Report upon which the SWC relied. Because the information supporting “the truth of the matter” was readily obtainable within the April 2006 Supplemental Director’s Report, the SWC’s responses are construed as admissions pursuant to Idaho Rule of Civil Procedure 37.²¹ Thus, it is undisputed that Pocatello’s use of the water rights fits within the broad definition of “municipal” purposes.

C. Pocatello timely objected to the purpose of use.

In its *Memorandum in Support of Motion For Summary Judgment*, the SWC placed great emphasis on Pocatello’s alleged failure to initially object to the purpose of use recommendation, for 29-7118, 29-7119, and 29-7770. The SWC further alleged that Pocatello only filed purpose of use objections four days after the City’s initial objections were filed.²² Pocatello must clarify these wholly inaccurate statements about the record at the SRBA court.

In discussing the SRBA record for 29-7118 and 29-7119, the SWC claimed that Pocatello “filed an *Objection* on November 14, 2003, only disagreeing with the place of use element”²³ and that “four days later, Pocatello filed an *Amended Objection*, objecting to the purpose of use and the place of use....”²⁴ To support this claim, the SWC submitted Pocatello’s

²⁰ This answer is located throughout SWC’s Answers to Pocatello’s Discovery, Exhibit E to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, pages 5, 6, 7, 8, 10, 11, 12, 17, 21, 22, 23, 26, 29, 30, 31, 38, 38, 44.

²¹ Idaho Rule of Civil Procedure 37 provides:

November 14th *Objections* as Exhibits J.1 and J.2. However, these November 14th *Objections* submitted by the SWC, clearly state the opposite - Pocatello objected to purpose of use stating that it “[s]hould be: municipal”.²⁵ As reasons supporting these *Objections* to purpose of use and place of use, Pocatello stated: “Purpose of Use: This water right is used by the City of Pocatello in its capacity and function as a municipality. Place of use: This municipal right is used within the municipal service area of the City of Pocatello.” (Emphasis in original.)²⁶

As to 29-7770, the SWC claimed that Pocatello “filed an *Objection* on November 14, 2003 but did not object to the ‘irrigation’ purpose of use. . . .”²⁷ To support this claim, the SWC submitted Pocatello’s November 14th *Objection* as Exhibit V. However, the November 14th *Objection* submitted by the SWC, clearly states the opposite - Pocatello objected to purpose of

“an evasive or incomplete answer is to be treated as a failure to answer.” [I.R.C.P. 37(a)(3)]

“[i]f a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney’s fees.” [I.R.C.P. 37(c)]

²² There is an easy explanation for the re-submission of Pocatello’s *Amended Objections*: Pocatello submitted a letter to the SRBA on November 18, 2003 explaining that Pocatello was re-submitting 38 separately numbered Amended Standard Form 1 *Objections* pursuant to the SRBA’s notification to Pocatello that each claim must be separately numbered and individually filed. Pocatello’s letter also stated that a chart, listing all of Pocatello’s general and individual objections was submitted with the November 14th filing as well as the November 18th filing. The chart and letter are automatically included with the *Objections* available to print off IDWR’s website. The chart and letters are also missing from SWC’s Exhibits to the Affidavit of Travis L. Thompson. See Exhibits B and C to Affidavit of Celeste Thaine.

²³ SWC’s *Memorandum in Support of SWC Motion for Summary Judgment*, page 5.

²⁴ SWC’s *Memorandum in Support of SWC Motion for Summary Judgment*, page 5.

²⁵ Exhibit J.1 and J.2 to Affidavit of Travis L. Thompson.

²⁶ Exhibit J.1 and J.2 to Affidavit of Travis L. Thompson

²⁷ SWC’s *Memorandum in Support of SWC Motion for Summary Judgment*, page 6.

use stating that it “[s]hould be: municipal”.²⁸ As reasons supporting this *Objection* to both purpose of use and place of use, Pocatello stated: “Purpose of Use: This water right is used by the City of Pocatello in its capacity and function as a municipality. Place of use: This municipal right is used within the municipal service area of the City of Pocatello.” (Emphasis in original.)²⁹

II. POCATELLO’S PLACE OF USE OBJECTIONS TO THE RECOMMENDATIONS FOR 29-7118, 29-7119, AND 29-7770.

A. Pocatello does not need to file a transfer under Idaho Code § 42-222.

The SWC moved for summary judgment stating, “Pocatello cannot change its licensed irrigation groundwater and wastewater rights into ‘municipal’ water rights to be used anywhere in Pocatello’s service area.”³⁰ Pocatello has already addressed its right to seek these changes pursuant to the accomplished transfer statute, and that IDWR is not estopped by its prior errors of law to recommend the appropriate elements for these municipal water rights. (See discussion *supra* pages 2-7) For these reasons, Pocatello is not required to file a transfer under 42-222. Again, the recommendation for the Highland Golf Course water right 29-3282, demonstrates that under Section 42-1425, IDWR may conform a place of use for a water right. This negates the need to file a transfer under 42-222.

B. Pocatello timely objected to the place of use.

The SRBA court record demonstrates that, Pocatello timely filed objections to place use. (See discussion *supra* pages 7-8)

²⁸ Exhibit V to Affidavit of Travis L. Thompson.

²⁹ Exhibit V to Affidavit of Travis L. Thompson

³⁰ SWC’s *Memorandum in Support of SWC Motion for Summary Judgment*, page 2.

III. ALTERNATE POINTS OF DIVERSION

The April 2006 Supplemental Director's Report that IDWR refused to recommend wells as alternate points of diversion (APOD) for surface water rights because, "the change, if any, on how the water was diverted occurred after 1987 . . . there is no factual basis for recognizing the wells as alternate sources for the surface water diversions."³¹

A. Legal issue: Pocatello's claim to alternate points of diversion for its 4 surface water rights.

The SWC stated that, "the SRBA's Rules of Procedure prohibit Pocatello from attempting to change an element of its water right claims by way of an objection."³² To the extent that the SWC maintains this issue is not before the court, it overlooks IDWR's basis for not recommending the APOD's, which basis is unrelated to whether Pocatello amended all 4 of these SRBA claims to list the APOD's. The factual and legal issues related to Pocatello's inclusion of wells as alternate points of diversion for its surface water rights are not subject to a summary judgment of dismissal.

Pocatello has four surface water rights: 29-271, 29-272, 29-273, and 29-4222. They are collectively discussed by IDWR as Pocatello's "surface water rights".³³ All four water rights have priorities before 1969, and under the common law are therefore not required to file a transfer to any wells which began operating as APOD's before 1969. In its objections about the APOD's, Pocatello stated its intent to amend its surface water claims.³⁴ The SWC moved for summary judgment on 29-271, 29-272, and 29-273 but not for 29-4222, perhaps because

³¹ April 2006 Supplemental Director's Report, page 11.

³² SWC's *Memorandum in Support of SWC Motion for Summary Judgment*, page 2.

³³ See April 2006 Supplemental Director's Report.

³⁴ Pocatello gave notice of its intent to amend the SRBA claims for all 4 of these surface rights, even when it had already amended 29-4222.

Pocatello had already amended 29-4222 to reflect the alternate points of diversion. These four water rights are treated as a group,³⁵ and Pocatello provided notice repeatedly of its intent to amend all four water rights.

1. "A prior decree is not considered 'conclusive' because it cannot insulate the water right from re-examination of subsequent use."

In their *Memorandum in Support of Summary Judgment*, the SWC cited the "binding effect" of prior decrees when it quoted Judge Melanson stating:

Although decrees issued in a prior adjudication are not conclusive as to the proof of existence of a water right, *prior decrees are binding on the parties to the decree and their privies. State v. Hagerman Water Rights Owners*, 130 Idaho 736, 741-42, 947 P.2d 409, 414-15 (1997)³⁶

However, the following sentence was omitted from within the block quote: "A prior decree is not considered 'conclusive' because it cannot insulate the water right from re-examination of subsequent use."³⁷ *Hagerman* was a water rights forfeiture case, but the point of the *Hagerman* opinion was that decreed water rights "are not insulated from re-examination by the court."³⁸ They are not frozen in time for all future use. Instead, water right decrees can be modified, or in the case of *Hagerman*, they can be reduced or even lost. Thus, Pocatello's surface water rights can be re-examined, and even modified to acknowledge accomplished transfers in points of diversion.

B. Factual issue: Pocatello's amended claims.

³⁵ See April 2006 Supplemental Director's Report.

³⁶ SWC *Memorandum in Support of SWC Motion For Summary Judgment*, page 9; citing, *Memorandum Decision and Order On Challenge and Order Disallowing Water Right Based on Federal Law* at 12-13, subcase no. 29-11609 (October 6) (emphasis added by SWC).

³⁷ *Memorandum Decision and Order On Challenge and Order Disallowing Water Right Based on Federal Law* at 12-13, subcase no. 29-11609 (October 6) (emphasis added); citing *State v. Hagerman Water Right Owners*, 130 Idaho 736, 741-42, 947 P.2D 409, 414-15 (1997).

³⁸ *State v. Hagerman Water Rights Owners*, 130 Idaho at 742, 947 P.2d at 414 (1997).

The SWC moved for summary judgment on Pocatello's objections to the point of diversion for water rights 29-271, 29-272, and 29-273 stating that "these previously decreed irrigation surface water rights do not include Pocatello's municipal wells as an 'alternate' point of diversion."³⁹ In the SWC's *Memorandum in Support of SWC Motion For Summary Judgment*, the statement of facts for 29-271, 29-272, 29-273 is riddled with inaccuracies that must be clarified by Pocatello.

The SWC alleged that when Pocatello filed its *Objection* on November 14th, 2003, the City only objected to the point of diversion for 29-272, and "apparently *agreed*" with the point of diversion recommendations for 29-271 and 29-273 (emphasis by SWC).⁴⁰ To prove this statement, the SWC attached what look like Pocatello's November 14th *Objections* as Exhibits D.1, D.2, and D.3, stating they are "true and correct copies" of the *Objections*.⁴¹ However, these documents are NOT complete copies of Pocatello's objections. Several important pages are missing from the SWC's exhibits, and this creates the false impression that Pocatello only objected to 29-272 when really, Pocatello clearly objected to the points of diversion for all four surface water rights.⁴²

³⁹ SWC's *Memorandum in Support of SWC Motion for Summary Judgment*, page 2.

⁴⁰ SWC's *Memorandum in Support of SWC Motion for Summary Judgment*, page 3.

⁴¹ Affidavit of Travis L. Thompson, page 2.

⁴² Upon reasonable belief and inquiry, the SRBA court and the IDWR website are the only places where the SWC could obtain Pocatello's *Objections* to the surface water rights. Pocatello's *Objections* were filed to the SRBA court (and made publicly available on IDWR's website) with the following documents attached to them: (1) "Attachment A" which lists the four surface water rights to which the point of diversion objection applies, (2) a November 14th Letter from Jo Beeman to IDWR explaining the four point of diversion *Objections*, and (3) a chart denoting every single *Objection* filed by Pocatello (INCLUDING the 4 point of diversion objections for the surface water rights.) ALL of these attachments are missing from the exhibits submitted by the SWC. Compare Standard Form 1 Objection as Exhibit D.2 to Affidavit of Travis L. Thompson with the Standard Form 1 Objection as Exhibit B to Affidavit of Celeste Thaine.

For example, the first page of Pocatello's November 14th *Objection* states that "Attachment A" will list the "surface water rights" to which this objection applies.⁴³ However, the SWC's allegedly "true and correct" copy of the *Objection* does NOT contain Attachment A, whereas the *Objection* publicly available on IDWR's website DOES contain Attachment A, as does the *Objection* Pocatello filed with the SRBA court.⁴⁴ Similarly, the SWC's allegedly "true and correct" copy of the *Objection* does NOT contain the chart listing all of Pocatello's November 14th objections (INCLUDING point of diversion objections to all four surface water rights), whereas the *Objection* publicly available on IDWR's website DOES contain the chart, as does the *Objection* filed with the SRBA court.⁴⁵

IV. ATTORNEYS FEES

Under Idaho Rules of Civil Procedure 37 and 54 the Special Master is authorized to award sanctions against the SWC for its failure to comply with the Idaho Civil Rules. Specifically, Rule 37 provides:

- "an evasive or incomplete answer is to be treated as a failure to answer." [I.R.C.P. 37(a)(3)]
- "[i]f a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees." [I.R.C.P. 37(c)]

⁴³ See both Standard Form 1 Objection as Exhibit D.2 to Affidavit of Travis L. Thompson and the Standard Form 1 Objection as Exhibit B to Affidavit of Celeste Thaine.

⁴⁴ Compare Standard Form 1 Objection as Exhibit D.2 to Affidavit of Travis L. Thompson with the Standard Form 1 Objection as Exhibit B to Affidavit of Celeste Thaine.

⁴⁵ Compare Standard Form 1 Objection as Exhibit D.2 to Affidavit of Travis L. Thompson with the Standard Form 1 Objection as Exhibit B to Affidavit of Celeste Thaine.

In addition, Rule 54(e)(1) permits attorney's fees for cases pursued "frivolously, unreasonably, or without foundation . . ."⁴⁶

During discovery, the SWC dragged their heels and refused to answer the majority of Pocatello's discovery requests, stating that "[t]he Coalition has made reasonable inquiry and the information known or readily obtainable is insufficient to admit of deny the request . . ."⁴⁷ even when the pertinent information was readily available in the April 2006 Supplemental Director's Report upon which the SWC relied. As discussed in Pocatello's *Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under 42-1425*, "the truth of the matter" was always readily obtainable within the April 2006 Supplemental Director's Report upon which the SWC's allegedly relied.

With the submission of its summary judgment motion, the SWC has incorrectly stated "the truth of the matter(s)" plead and filed by the City of Pocatello in 2003. As Pocatello has shown in this brief, the SWC's *Memorandum in Support the SWC's Motion For Summary Judgment* contains numerous errors and factual inaccuracies that are extremely time-consuming for Pocatello to research. The SWC's failure to comply with discovery rules, and failure to submit factually accurate documents to this court prejudices and limits Pocatello's ability to develop its own case because Pocatello must invest time and resources parsing and correcting the SWC's factually muddled briefs.

⁴⁶ Idaho Rule of Civil Procedure 54(e)(1).

⁴⁷ This answer is located throughout SWC's Answers to Pocatello's Discovery, Exhibit E to Affidavit of Joyce Angell, in support of *Pocatello's Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, pages 5, 6, 7, 8, 10, 11, 12, 17, 21, 22, 23, 26, 29, 30, 31, 38, 38, 44.

As a sanction for the SWC's dilatory behavior, Pocatello respectfully requests that the Special Master require the SWC to pay Pocatello's attorneys fees and costs related to the drafting and filing of the *Motion for Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under 42-1425*, and *Response Brief to the Surface Water Coalition's Motion For Summary Judgment*.

CONCLUSION

In conclusion, Pocatello respectfully requests that the Special Master DENY the SWC's Motion for Summary Judgment because (1) the accomplished transfer statute 42-1425, allows Pocatello to confirm changes to its water rights, negating the need to file a transfer under 42-222, (2) Pocatello's objections raise triable issues as to pre-1987 changes in its water rights and the objections were brought in conformance with applicable SRBA procedure, and (3) as a matter of law, IDWR is not estopped to correct its prior errors of law.

Pocatello also respectfully requests that the Special Master GRANT Pocatello's motion for summary judgment because it is still undisputed that the purpose of use of Pocatello's water rights is municipal, and therefore the City's motion for summary judgment of purpose of use is still appropriate, despite the SWC's confusing rendition of the issues.

In addition, Pocatello respectfully requests that the Special Master GRANT attorneys fees to Pocatello pursuant to I.R.C.P. 37(C) and 54(e)(1).

DATED this 12th day of December 2006.

BEEMAN & ASSOCIATES, P.C.
Attorneys for the City of Pocatello

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December 2006, I caused a true copy of the foregoing **CITY OF POCA TELLO'S RESPONSE BRIEF TO THE SURFACE WATER COALITION'S MOTION FOR SUMMARY JUDGMENT** to be served on the following by U.S. First Class Mail unless indicated as faxed or hand delivered:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

C. TOM ARKOOSH
ARKOOSH LAW OFFICES, CHTD.
PO BOX 32
GOODING, IDAHO 83330

STATE OF IDAHO
REPRESENTED BY:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

W. KENT FLETCHER
FLETCHER LAW OFFICE
PO BOX 248
BURLEY, IDAHO 83318

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

ROGER D. LING
LING ROBINSON & WALKER
PO BOX 396
RUPERT, IDAHO 83350

JOHN A. ROSHOLT
TRAVIS L. THOMPSON
BARKER ROSHOLT & SIMPSON
113 MAIN AVE. WEST, SUITE 303
TWIN FALLS, IDAHO 83301-6167


Josephine P. Beeman

Z:\1776\100\LIT\DISCS\7442

3537

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07222
29-07322
29-07375
29-07431
29-07450
29-07502
29-07770
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29-13637
29-13638
29-13639

Josephine P. Beeman #1806
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
jo.beeman@beemanlaw.com

Sarah A. Klahn
William A. Hillhouse II
White & Jankowski, LLP
511 16th St., Suite 500
Denver, CO 80202
303-595-9441
303-825-5632 (Facsimile)
sarahk@white-jankowski.com

Attorneys for City of Pocatello

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">DEC 12 2006</div>
By _____
Clerk Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
)	
Case No. 39576	)	AFFIDAVIT OF CELESTE THAINE IN
	)	SUPPORT OF CITY OF POCA TELLO'S
	)	RESPONSE BRIEF TO THE SURFACE WATER
	)	COALITION'S MOTION FOR SUMMARY
_____	)	JUDGMENT

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

I, Celeste Thaine, state that I am employed by the law office of Beeman & Associates, P.C., and I make the following statements on the basis of my personal knowledge.

1. I attest that the following attached documents are true and correct copies of documents I obtained from the electronic database developed and maintained by the Idaho Department of Water Resources (IDWR) for SRBA claim file 29-271.

Exhibit B: November 14, 2003 Standard Form 1 Objection Subcase Nos. Attachment A (29-271, 29-272, 29-273, 29-4222), including a November 14, 2003 letter from Josephine P. Beeman to Diana Delaney of the Snake River Basin Adjudication and a chart of the City of Pocatello objections filed on November 14, 2003.

Exhibit C: November 18, 2003 Amended Standard Form 1 Objection Subcase No. 29-271, including a November 18, 2003 letter from Josephine P. Beeman to Diana Delaney of the Snake River Basin Adjudication and a chart of the City of Pocatello objections filed on November 14, 2003.

2. Exhibit B and Exhibit C are located under Doc Name and Doc Date OBJECTION 11/14/2003 and AMENDED OBJECTION 11/18/2003, respectively, on the IDWR electronic database.

3. Exhibit B also is located on the IDWR electronic database of SRBA claim files 29-272, 29-273, and 29-4222. Amended Objections to claims 29-272, 29-273, and 29-4222, which include the same documents and objections as Exhibit C, are located on the IDWR electronic database.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

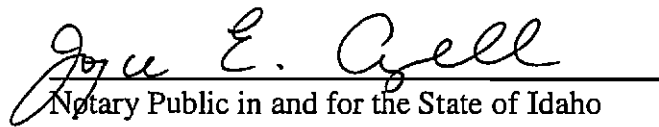
Dated this 12th day of December 2006.



Celeste Thaine

SUBSCRIBED AND SWORN to before me this 12th day of December 2006.





Notary Public in and for the State of Idaho
Residing in: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December 2006, I caused a true copy of the foregoing **AFFIDAVIT OF CELESTE THAINE IN SUPPORT OF THE CITY OF POCA TELLO'S RESPONSE BRIEF TO THE SURFACE WATER COALITION'S MOTION FOR SUMMARY JUDGMENT** to be served on the following by U.S. First Class Mail unless indicated as faxed, hand delivered, or emailed:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

STATE OF IDAHO
REPRESENTED BY:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

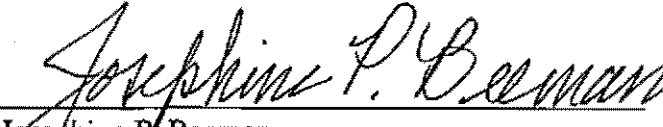
DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

C. TOM ARKOOSH
ARKOOSH LAW OFFICES, CHTD.
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BARKER ROSHOLT & SIMPSON
113 MAIN AVE. WEST, SUITE 303
TWIN FALLS, IDAHO 83301-6167


Josephine P. Beeman

1776/100/Lit/Disc/SJ/7459

EXHIBIT A

Subcase Numbers

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29-00273
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29-07375
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29-13637
29-13638
29-13639

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase No. Attachment A
(surface water rights)

**STANDARD FORM 1
OBJECTION**

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☒ **Point(s) of Diversion**
Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):


The City of Pocatello's municipal wells derive their supply from the Lower Portneuf River Valley Aquifer that underlies the Portneuf River as it flows through the City of Pocatello. Mink Creek and Gibson Jack Creek are connected to the Lower Portneuf River Valley Aquifer upstream of the City of Pocatello's municipal wells. Due to this interconnection, these municipal wells divert these surface water priorities as they are legally and physically available. Leave will be sought from the court to amend the notice of claim for this water right to properly reflect the elements as set forth above.

VERIFICATION

State of Idaho)
)ss.
County of Ada)

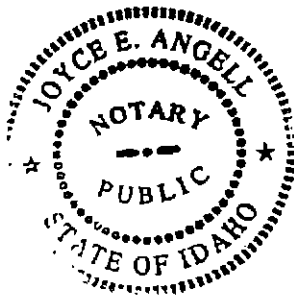
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

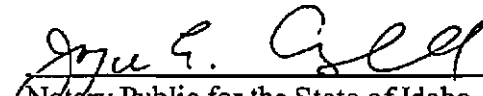
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

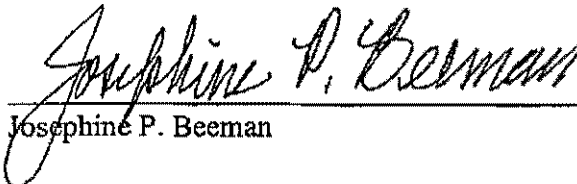
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Attachment A

29-271

29-272

29-273

29-4222

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 14, 2003

*Via Facsimile (208) 736-2121
and U.S. Mail*

Diana Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
253 Third Avenue, North
Twin Falls, ID 83301

RECEIVED

NOV 18 2003

Department of Water Resources

Re: Objections to Director's Report for Irrigation and Other Water Rights in Basin 29

Dear Ms. Delaney:

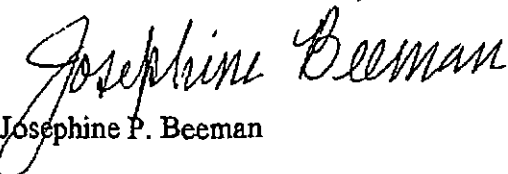
The City of Pocatello is filing objections to 40 water rights listed in the Director's Report for Irrigation and Other Water Rights in Basin 29.

We enclose a chart listing these 40 water rights and the grounds for objections to each. The bolding and notes on the chart explain which water rights are affected by the six group objections and which are affected by the 16 individual water right objections. We hope that this chart facilitates the court's handling of these objections.

The originals and copies for the court to conform have been sent by courier. Please call if we can be of additional help or answer questions. Thank you for your assistance in these matters.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

JPB:ja
cc: City of Pocatello
IDWR Document Depository
US Department of Justice
Office of Attorney General
Enclosure
Z:\1776\Obj\5998

3538

CITY OF POCATELLO OBJECTIONS FILED NOVEMBER 13, 2003

	General Provisions	Municipal Provisions	Provisions Needing Approval	Water Right Connection	Accomplished Transfer	Rollbacks Diversion (Surface)	Name and address	Source	Quantity	Priority Date	Points of Diversion	Instream Flow	Purpose of Use	Period of Year	Place of Use
29 271	X	X				X									
29 272	X	X				X									
29 273	X	X				X									
29 2274	X	X		X	X										
29 2338	X	X		X	X										
29 2354	X	X													
29 2382	X	X													
29 2401	X	X	X	X											
29 2499	X	X	X	X											
29 4221	X	X	X	X						X					
29 4222	X	X				X			X						
29 4223	X	X	X	X					X						
29 4224	X	X	X	X											
29 4225	X	X	X	X											
29 4226	X	X	X	X					X						
29 7106	X	X	X	X											
29 7118	X	X											X		X
29 7119	X	X											X		X
29 7222	X	X													
29 7322	X	X	X	X											
29 7375	X	X		X	X										
29 7431	X								X				X		X
29 7502	X	X	X								X				
29 7770	X	X											X		X
29 7782	X	X		X											
29 11339	X	X	X	X											
29 11344	X	X	X								X				
29 11348	X	X	X	X											
29 11609									X		X		X		X
29 12877							X	X	X	X	X	X	X	X	X
29 13558	X	X	X	X						X					
29 13559	X	X	X	X											
29 13560	X	X	X	X											
29 13561	X	X	X	X											
29 13562	X	X	X	X											
29 13636	X	X													X
29 13637	X	X	X	X											
29 13638	X	X	X								X				
29 13639	X	X	X	X						X					

Note 1: Six group objections affect multiple water rights (objections in bold).

Note 2: Sixteen objections are to individual water rights (water right numbers in bold).

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Subcase No. 29-271

Case No. 39576

AMENDED
STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

3600

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See "Reasons supporting objections" below.
3. ☒ **Quantity**
Should be: See "Reasons supporting objections" below.
4. ☒ **Priority Date**
Should be: See "Reasons supporting objections" below.
5. ☒ **Point(s) of Diversion**
Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights.
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: See "Reasons supporting objections" below.
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right."

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

1. Source, quantity, priority date and purpose of use (remark, general provision): All 38 of the City of Pocatello's basin 29 state-law water rights should include the following remark regarding the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage

3601

facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

All 38 of the City of Pocatello's basin 29 state-law water rights should be decreed with the following general provisions:

Separate Streams:

For purposes of water distribution in the Portneuf River drainage basin, water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Portneuf River, and will be administered separately from all other water rights in Basin 29:

Mink Creek

Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

Separate Administration: All 38 of the City of Pocatello's basin 29 state-law water rights, including water right no. and source, should be decreed with the following general provisions:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Basin 29 in accordance with the prior appropriation doctrine as established by Idaho law:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Swan Falls: This objection is parallel to the Swan Falls objections in Basin 37 (Consolidated Subcase No. 37-02499). Because the Swan Falls objections in Basin 37 have not been designated a basin-wide issue, this objection addresses the Swan Fall protections for water rights in Basin 29.

No decree entered in the SRBA will supercede, preempt, modify, terminate, extend or otherwise affect the legal force and effect of the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract (so long as the Agreement and Contract remain in effect), Consent Judgments in *Idaho Power Co. v. State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990)* and *Idaho Power Co. v. State of Idaho, Case No. 62237 (Fourth Judicial Dist. Mar. 9, 1990)*, and the 1982 State Water Plan (as amended in 1985).

2. Place of use: Beneficial use of a municipal water right includes all actions necessary to comply with public health and safety standards. The City of Pocatello's municipal service area includes all lands necessary to complete the beneficial use of the municipal water right.

3. Point of diversion: The City of Pocatello's municipal wells derive their supply from the Lower Portneuf River Valley Aquifer that underlies the Portneuf River as it flows through the City of Pocatello. Mink Creek and Gibson Jack Creek are connected to the Lower Portneuf River Valley Aquifer upstream of the City of Pocatello's municipal wells. Due to this interconnection, these municipal wells divert these surface water priorities as they are legally and physically available. Leave will be sought from the court to amend the notice of claim for this water right to properly reflect the elements as set forth above.

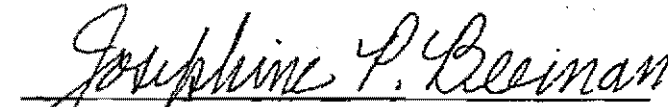
3303

VERIFICATION

State of Idaho)
) ss.
County of Ada)

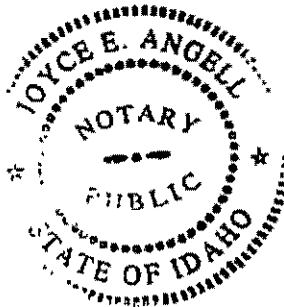
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

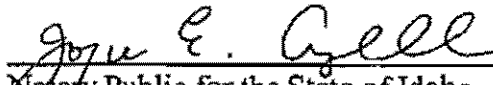
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 18, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

3004

CERTIFICATE OF MAILING

I certify that on November 18, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

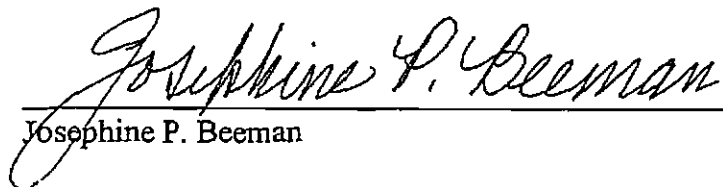
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724


Josephine P. Beeman

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 18, 2003

Diana Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
253 Third Avenue, North
Twin Falls, ID 83301

Re: City of Pocatello's Amended Objections to
Director's Report for Irrigation and Other Water Rights in Basin 29

Dear Ms. Delaney:

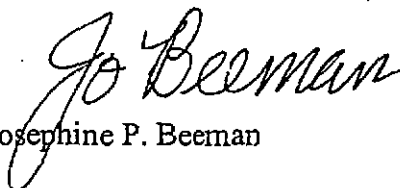
On Friday, November 14, 2003, the City of Pocatello filed objections to 40 water rights listed in the Director's Report for Irrigation and Other Water Rights in Basin 29. This was accomplished with 22 Standard Form 1 documents, of which 16 were addressed to separately numbered water rights, and six were addressed to group objections affecting multiple water rights. As a result, 38 of the 40 water rights were listed in more than one objection.

In accordance with your phone call to us on November 17, we are submitting 38 separately numbered Amended Standard Form 1: Objections, so that each of the 38 water rights which were listed in more than one objection will now have a separately numbered Standard Form 1 which includes all general and specific objections affecting that water right. (The objections to 29-11609 and 29-12877 were not amended.) Each of the 40 water rights is listed on the enclosed chart which also accompanied the filing on Friday. Then, as now, the chart shows both the general and individual objections for each of the 40 water rights.

We appreciate your notice to our office. We are reserving all of the affected parties. Please let us know if we can be of further assistance.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

JPB:ja
Enclosures
cc: City of Pocatello
IDWR Document Depository
US Department of Justice
Office of Attorney General

20:177(01)45968B
AFFIDAVIT OF CELESTE THAINE IN SUPPORT OF CITY OF POCATELLO'S RESPONSE BRIEF TO THE
SWC'S MOTION FOR SUMMARY JUDGMENT

3306

CITY OF POCA TELLO OBJECTIONS FILED NOVEMBER 14, 2003

	General Provision	Mineral Right	Provision Noted	General Inter- connection	Completed Inter- connection	Point of Diversion (Square)	Name and address	Source	Quantity	Priority Date	Points of Diversion	Instream Flow	Purpose of Use	Period of Year	Place of Use
29 271	X	X				X									
29 272	X	X				X									
29 273	X	X				X									
29 2274	X	X		X	X										
29 2338	X	X		X	X										
29 2354	X	X													
29 2382	X	X													
29 2401	X	X	X	X											
29 2499	X	X	X	X											
29 4221	X	X	X	X						X					
29 4222	X	X				X			X						
29 4223	X	X	X	X					X						
29 4224	X	X	X	X											
29 4225	X	X	X	X											
29 4226	X	X	X	X					X						
29 7106	X	X	X	X											
29 7118	X	X											X		X
29 7119	X	X											X		X
29 7222	X	X													
29 7322	X	X	X	X											
29 7375	X	X		X	X										
29 7431	X								X				X		X
29 7450	X	X	X								X				
29 7502	X	X													
29 7770	X	X											X		X
29 7782	X	X		X											
29 11339	X	X	X	X											
29 11344	X	X	X								X				
29 11348	X	X	X	X											
29 11609									X		X		X		X
29 12077							X	X	X	X	X	X	X	X	X
29 13558	X	X	X	X						X					
29 13559	X	X	X	X											
29 13560	X	X	X	X											
29 13561	X	X	X	X											
29 13562	X	X	X	X											
29 13636	X	X													X
29 13637	X	X	X	X											
29 13638	X	X	X								X				
29 13639	X	X	X	X						X					

Note 1: Six group objections affect multiple water rights (objections in bold).

Note 2: Sixteen objections are to individual water rights (water right numbers in bold).

“Coalition”), by and through their undersigned attorneys of record, and submit this *Reply to the City of Pocatello’s Response Brief to the Surface Water Coalition’s Motion for Summary Judgment*, pursuant to AO1(6)(f) and IRCP 56(c). For the reasons set forth below, in addition to the reasons set forth in the briefing in response to Pocatello’s motion for summary judgment, this Court should grant the Coalition’s motion.

INTRODUCTION

Pocatello’s response brief misses the point. Instead of addressing the law which prohibits a claimant from using the accomplished transfer statute where there has been no change to any element of a water right, Pocatello spends much of its response addressing alleged factual errors in the Coalition’s brief. These alleged factual errors, however, do not impact this Court’s decision on summary judgment. Moreover, Pocatello’s failure to address the Presiding Judge’s *Memorandum Decision and Order on Challenge and Order Disallowing Water Right Based on Federal Law* (Subcase No. 29-11609) is telling. Pocatello cannot use the SRBA to collaterally attack its prior decrees and licenses. Yet, that is exactly what Pocatello is attempting to do. In fact, for the first time, Pocatello is even going so far as to claim IDWR “erred” when it licensed Pocatello’s irrigation ground water rights. *Pocatello Response* at 3, 15. Apparently, after claiming and using these water rights for “irrigation” purposes on specific places of use (for over thirty years for certain rights), Pocatello has now decided that IDWR erred and that these rights should have been licensed as “municipal” rights with a place of use anywhere in the city’s municipal limits.

Despite this alleged “error”, it is undisputed that Pocatello did not appeal any of the licenses when they were issued, including the license for #29-07770 which was issued in January

2003. The desperation in Pocatello's arguments is becoming more obvious and the undisputed facts on the matter show that the Coalition is entitled to judgment as a matter of law.

In addition, Pocatello fails to address the real issue regarding its attempt to transfer the points of diversion for water rights #29-271, #29-272, and #29-273 via an SRBA objection. Again, Pocatello's failure to address the controlling law on this issue, this Court's Rule 4(d)(1)(b), is telling. Instead, Pocatello provides vague and unsupported statements about "a transfer to [] wells which began operating as APOD's before 1969." *Pocatello Response* at 10. This unsupported statement is irrelevant and is found nowhere in the *Notices of Claim* for these surface water rights. It is undisputed that Pocatello claimed these rights, in 1990, with surface water points of diversion only. It is also undisputed that Pocatello has not amended its claims for water rights #29-271, #29-272, and #29-273. Presumably, Pocatello was aware of its water delivery systems when it claimed these water rights. Furthermore, had Pocatello actually transferred these rights to a well prior to 1969, as its vague statement seems to infer, one would have to presuppose that Pocatello would have realized that "fact" before 1990. In addition, Pocatello's passing statement that its four surface water rights "are treated as a group" is without any factual or legal support. All four water rights were claimed separately. *See Ex. A to Aff. of Paul L. Arrington*; Exs. B.1, B.2, and B.3 to *Thompson Aff. in Support of Motion for Summary Judgment*.¹ Although Pocatello later amended water right claim #29-4222, it failed to do the same for #29-271, #29-272, and #29-273. Parties to the SRBA have not put been on notice of the changes to the claims Pocatello "believes" it has made. Idaho law, including this Court's rules, prohibits Pocatello from amending its claims by way of an objection.

¹ The documents attached to the *Affidavit of Paul L. Arrington* are already part of the record in these subcases and another subcase on file with the SRBA Court. However, for the convenience of the Court and the parties the Coalition submits them as exhibits for reference.

Finally, Pocatello is not entitled to receive attorneys' fees for drafting and filing its own summary judgment motion or in responding to the Coalition's motion. The Coalition did not force Pocatello to file a summary judgment motion in these subcases. In essence, Pocatello is arguing that the Coalition's refusal to recognize the city's twisted interpretation of the 2006 Supplemental Director's Report ("*706 Report*") justifies an award of attorneys' fees. As discussed in greater detail in the Coalition's *Response to the City of Pocatello's Motion for Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under 42-1425*, there is no legal or factual basis, in the *706 Report* or otherwise, to justify the objections raised by Pocatello. As such, any "extremely time-consuming ... research" simply follows from Pocatello's attempt to justify its own unsupportable objections or clarify its initial confusing and improper objections filed in these subcases.² Moreover, Pocatello's own motion alleges that its objections create "triable issues of fact". With that statement, if indeed the city believes it is true, Pocatello had no basis to move for summary judgment in the first place. Rule 56(c) is clear that summary judgment is only appropriate when there is no "genuine issue as to any material fact". The Court should disregard Pocatello's attempt to make someone else pay for its misdirected filings in these subcases. Accordingly, Pocatello's request for a sanction and attorneys' fees should be denied.

² Pocatello's alleged "time-consuming research" is confusing since the city's counsel is presumably in possession of the various water right files regarding Pocatello's claims in the SRBA, and the documents referenced in the Coalition's motion were submitted with an affidavit. The confusion of certain facts in this case surrounding Pocatello's objections, as explained in greater detail below, stems from Pocatello's multiple objections filed in each subcase on November 14, 2003. Pocatello apparently filed separate objections in each subcase entitled "Attachment A". Exs. B, C to *Arrington Aff.* These filings were apparently rejected by this Court. For example, see *SRBA Subcase Summary Report 29-07770*, docket entry "11-18-2003 ORIGINAL OBJ 1 SUBMITTED TO COURT 11/14/03 DID NOT CONFORM TO OBJ FORMAT." Ex. D to *Arrington Aff.* Accordingly, any objections filed by Pocatello on November 14, 2003 are apparently not "at issue" or relevant for resolving these motions since they were rejected by the Court.

ARGUMENT

I. Pocatello Ignores the Binding Effect of its Prior Decreed and Licensed Water Rights and the Presiding Judge's Decision in Subcase No. 29-11609.

Pocatello's *Response* completely ignores I.C. § 42-220 and the Presiding Judge's *Memorandum Decision and Order on Challenge and Order Disallowing Water Right Based on Federal Law* (subcase no. 39-11609) ("Order"). Section 42-220 expressly states that a "license shall be binding upon the state as to the right of such licensee . . ." I.C. § 42-220. The Presiding Judge explained that licenses issued under this statute are "also binding on the license holder." *Order* at 12. The rule is necessary to prevent water right holders from collaterally attacking their own water rights "under a more favorable legal theory in a subsequent proceeding." *Id.* at 13. Other than claiming that its surface water rights can be "re-examined, and even modified" under an accomplished transfer theory, Pocatello does not address this decision as it relates to its licensed ground water rights. *Pocatello Response* at 11.

II. Since There has Never Been Any Change to the Use or Diversion of Water Rights 42-7770, 29-7431, 29-7118 and 29-7119, Section 42-1425 Does not Save Pocatello From the Requirement to File for a Transfer.

Although the "accomplished transfer" statute (I.C. § 42-1425) authorizes certain pre-1987 changes to a water right under certain conditions, the statute does not apply to Pocatello's licensed ground water rights. Indeed, Pocatello's own alleged facts demonstrate that Pocatello has "always used" water rights #29-7118, #29-7119, #29-7431, and #29-07770 for "irrigation" purposes. As explained in greater detail in the Coalition's response to Pocatello's summary judgment motion, the terms "manage the land" and "land application", the only uses Pocatello claims to have ever made, are indistinguishable from irrigation. Pocatello, without any facts to show a change in its use prior to 1987, is bound by its prior licenses in the SRBA.

Pocatello's own brief defeats its "municipal" purpose of use objection to its licensed irrigation water rights. Pocatello's entire argument hinges on the application of section 42-1425 – the accomplished transfer statute. According to that statute, any *change* in the purpose of use, place of use, or point of diversion, which occurred prior to 1987, can be effectuated without proceeding through the transfer application procedures of section 42-222, provided no other existing water right was injured at the time of the change. I.C. § 42-1425(1)(b). Any such changes occurring after 1987 must comply with the transfer application requirements of section 42-222. Section 42-1425 clearly states its most elemental requirement: *change*. The statute is not a vehicle for a water right holder – who applied for, claimed and used a water right, prior to 1987, for a specific purpose in a specific place with a specific point of diversion – to decide, on a whim, that the right should have been something else.

Pocatello's ad-hoc legal theories do not substitute the undisputed facts, namely, that Pocatello has always used its licensed water rights for irrigation purposes. Moreover, Pocatello's characterization of its water use (in its capacity and function as a city for the benefit of its inhabitants) does not effect a change to the elements of its licensed irrigation water rights.

Pocatello admits that there has never been any change to these water rights. *See Pocatello Response* at 3 ("Pocatello initiated and obtained each of the four 'irrigation' licenses for which it seeks municipal purpose of use in the SRBA. It is undisputed that the nature of the use remains unchanged for each water right."). In fact, Pocatello has never asserted that any change has occurred with regards to these water rights.³ Instead, Pocatello now for the first time

³ Pocatello attempts to justify its objections by addressing the recommendation for water right 29-2382. *Pocatello Response* at 3. According to Pocatello, since that right, purchased from a private owner and licensed for irrigation *and domestic* purposes, was recommended as "municipal," these rights should likewise be recommended as such. Pocatello is wrong. First, that subcase is not subject to the present summary judgment motions nor does it constitute some precedent or rule of law that applies to all of Pocatello's licensed water rights. Furthermore, none of the rights in question here were licensed for irrigation *and* domestic purposes. The Coalition is unaware of the historic use of the right by the private owner and whether or not the well still provides water for domestic purposes to the golf

accuses IDWR of making “an error of law” when the licenses were originally issued. *Pocatello Response* at 3. Even if IDWR did err, Pocatello, by not appealing the licenses to district court, waived any “error of law” and readily accepted the licensed “irrigation” purpose of use.

Pocatello cannot use the SRBA as a means to collaterally attack a license for which it had every opportunity to appeal and change in the first place. The fact is IDWR did not err, it licensed the water rights for the very purpose Pocatello applied for, and proved up on by filing the beneficial use reports to IDWR. *See Exs. K, L, and M to 706 Report*. Pocatello’s attempt to now blame IDWR for “errors” at the time of licensing is without merit and should be rejected.

Pocatello, however, barely addresses the applicable law and instead, spends much of its time addressing a perceived “broad” definition of the term “municipal” as well as the alleged shortcomings of the Coalition’s discovery responses. Such arguments should not distract the Court from the real issue at hand. The issue here, which Pocatello fails to address, is whether the elements of a water right, the use or diversion of which has *never been changed*, can be altered at the whim of the water right holder using the accomplished transfer statute? Surely, it cannot.

Instead of addressing the law, Pocatello argues that since its uses can conceivably fall within a broad definition of the term “municipal,” the rights should be changed. *Pocatello Response* at 4. This “broad” definition, however, does not mean that every right held by a city automatically qualifies as a municipal right or that IDWR makes an “error of law” every time it granted a license to a city with a nature of use other than “municipal.” A water right is defined by its elements and not by the status of the individual or entity holding that right. In fact, there are a number of instances throughout Idaho where a municipality holds a water right with a purpose of use other than “municipal.” *See Ex. D to Second Thompson Aff.* Moreover,

course facilities or some surrounding residences. Finally, if any errors have been made, it was IDWR’s error to recommend 29-2382 for “municipal” purposes instead of recommending the right as licensed.

“municipal” water rights are not held by cities alone, for example many private water companies hold “municipal” rights in Idaho.

Any attempt to subsequently alter the elements of irrigation water rights, without any actual change to the usage or diversion of those rights, would result in an abuse of process, *see* I.C. § 42-1425 & 42-222, and would allow cities to use more water in ways never contemplated under the original application. This is the case, even if the use of these rights may fall within the definition of “municipal” purpose as set forth in the 1996 amendments. Any such changes must be handled by IDWR through the appropriate administrative actions. Something Pocatello vehemently opposes for some unknown reason.

Pocatello has not shown that it can meet the requirements of section 42-1425. Regardless of when the city specifically objected to the recommendations,⁴ no change has ever occurred to any element of these water rights. Pocatello cannot subvert the administrative process by filing an objection in the SRBA. This is especially the case since Pocatello has already passed on its opportunity to challenge the “irrigation” purpose of use. IDWR licensed each of these water rights for “irrigation” purposes. Presumably, as the rights were licensed in the name of “City of Pocatello,” IDWR was aware that the licensee was a municipality. That notwithstanding, IDWR licensed these rights as they were claimed by the city in the various applications for permit – as “irrigation” rights. Once licensed, Pocatello had the chance to appeal the determination, but

⁴ In its *Brief in Support of Summary Judgment*, the Coalition did not discover certain facts surrounding Pocatello’s objections to these rights. This was due to the fact that Pocatello filed, in some cases, three separate objections on each individual water right on the same day, November 14, 2003. As such, some of the facts were confused by the Coalition. For example, in one Objection, filed on November 14, 2003, for water right 29-7770, Pocatello does not object to the purpose of use being Irrigation. *See* Ex. B to *Arrington Aff.* In a second Objection, filed the same day on the same right, Pocatello indicates that it was objecting to the purpose of use but failed to provide any explanation. *See* Ex. C to *Arrington Aff.* Finally, in a third objection, filed the same day on the same right, Pocatello did object to the purpose of use and indicated that it should be “municipal.” *See* Ex. V to *Thompson Aff. in Support of Motion for Summary Judgment*. Regardless of these inadvertent errors, the *material* facts are undisputed – no change has ever occurred to any element of these water rights – and the law requires Pocatello to file a transfer application with IDWR.

refused that opportunity. Accordingly, the licenses became final and binding on the city. Now, Pocatello asserts that, notwithstanding its own claims, IDWR erred in licensing these rights. This “new” argument is without merit and is barred by *res judicata*. See *Union Pacific Land & Resources Corp. v. Shoshone Cty. Assessor*, 140 Idaho 528, 534, 96 P.3d 629, 635 (2004) (*res Judicata* “prohibits the ‘relitigation of any claims relating to the same cause of action which were actually made *or which might have been made*’”) (emphasis added). Since Pocatello failed to appeal the licenses at the time when they were issued, any “error” argument was waived and is barred by the doctrine of *res judicata*. Moreover, if IDWR “erred”, one would have expected Pocatello to have explained the same when it filed its original notices of claim in 1990. Regardless, Idaho law prohibits Pocatello from “appealing” its licenses now through the SRBA. Pocatello’s purpose of use objections to water rights #29-7118, #29-7119, #29-7431, #29-07770 should be dismissed as a matter of law.

III. Pocatello Has Not Created Alternate Point of Diversions for its Surface Water Rights.

Decrees “are binding on the parties to the decree and their privies.” *Order* at 12. Notwithstanding the binding nature, such a right does not prevent possible future examination of those water rights. Surely, a water right must be used or it may be lost to forfeiture or abandonment. Similarly, if an element of the right has changed, the right may be reexamined for a transfer – either an accomplished transfer or a section 42-222 transfer depending on the facts. What is clear from the law, however, is that this potential for reexamination does not mean a decree or license will be subject to ad hoc amendments to the rights at the whim of the right holder. Indeed, for a transfer to take place (either accomplished or administrative) the owner must meet the specific statutory requirements. Pocatello cannot do this.

Pocatello cannot show that they ever diverted their surface water through their groundwater wells. Apart from certain issues with respect to the source identified by IDWR in the *706 Report*, Pocatello would still have to demonstrate: (1) a decrease in surface water diversions; (2) an increase in groundwater diversions; and (3) that the increase in groundwater diversions results in water diversions which exceed the total cumulative diversion rates of all its groundwater rights and that the water diverted originated from the surface source. Absent such a showing, Pocatello would merely be diverting more water pursuant to its groundwater rights while, at the same time, using less or no water under its surface water rights. Pocatello has not made any such showing. Accordingly, Pocatello cannot show that it created an alternate point of diversion for its surface water rights.

IV. Pocatello's Request for Sanction and Attorneys' Fees Should be Denied.

Much like its *Brief in Support of Summary Judgment*, Pocatello argues that the Coalition's discovery responses were incomplete or otherwise inadequate. Pocatello has never contacted the Coalition to discuss the discovery requests or the claimed "inadequacies" in the Coalition's responses. Apparently, Pocatello expected the Coalition to admit and agree with every assertion the city put in its discovery request regardless of fact that much of the requests sought approval of conclusions drawn by Pocatello which are drastic departures from the law and facts of this case. If Pocatello had an issue with the Coalition's responses, standard practice in Idaho would suggest Pocatello's counsel would confer and try to resolve those differences with Coalition counsel. No effort has been made on Pocatello's part. Instead, Pocatello raises the issue with the Court in its response to the Coalition's summary judgment motion. Since the Coalition does not admit Pocatello's rendition of the law and facts, the city alleges the Coalition

should be sanctioned and awarded attorneys' fees. There is no basis for such a sanction or award.

Pocatello's attorneys' fees argument is drawn from the language of Civil Rule 37. That rule indicates that a party may be entitled to attorneys' fees if discovery requests are inadequate. However such awards will not be granted if "the party failing to admit had reasonable ground to believe the party might prevail on the matter" or there is "good reason for the failure to admit". Civil Rule 37(c). In addition, the moving party must "*prove*[]" ... the truth of the matter." *Id.*; see also *Payne v. Wallace*, 136 Idaho 303, 309, 32 P.2d 695, 701 (App. Ct. 2001) ("By its plaintiff terms, Rule 37(c), authorizes sanctions only in favor of a party who ... '*proves* ... the truth of the matter'" (emphasis in original)). Pocatello's request does not meet the standard of the rule.

First, the Coalition's motion for summary judgment provides a "reasonable ground" for which it "might" prevail on the matter. The Coalition has cited relevant law on the issues relating to Pocatello's prior decrees and licenses and has demonstrated why Pocatello cannot collaterally attack the same in the SRBA. Moreover, the claims filed by Pocatello, the recommendations issued by the Director, and the *706 Report* all support the Coalition's motion. On that basis alone Pocatello's request for sanction and fees should be denied. Pocatello has failed to demonstrate that the Coalition's motion is not a "reasonable ground" for which the Coalition "might" prevail on those matters.

In addition, merely disagreeing with a party's incorrect interpretation of the facts and law does not give rise to such attorneys' fees. This is especially the case when, as here, Pocatello, the moving party, has failed to prove any "truth of the matter." The Coalition had good reason for its responses to Pocatello's discovery requests. As discussed in greater detail in the Coalition's response to Pocatello's motion for summary judgment, the city's discovery requests

were full of generalizations and baseless assumptions which were not, in any way, supported by the *706 Report*. For example, Pocatello interprets IDWR's conclusions that the waters in Basin 29 are interconnected to mean that the city can automatically use groundwater wells as alternative points of diversion for its surface water rights without any analysis as to the actual hydrology of the specific area and the impact on surrounding water rights. The Coalition is unaware of any basis in law or fact for such a conclusion. Likewise, Pocatello would have this Court believe that any right held by a city, by necessity, qualifies as a "municipal" right, even though it may be recommended for "irrigation" purposes as originally claimed and previously licensed. Once again, there is no basis in law or fact for such a conclusion. Pocatello's own licensed "irrigation" water rights demonstrate otherwise.

In fact, Pocatello's objections and discovery requests were so full of factual and legal manipulations that it is no wonder the city was subject to "extremely time-consuming ... research." *Pocatello Response* at 14. Such research would be necessary when attempting to justify arguments without any supporting legal authority. Furthermore, any errors which may have been present in the Coalition's briefing dealt solely with the multitude of objections Pocatello filed for each water right. The fact Pocatello did not follow proper procedure and instead filed multiple, overlapping objections was cause for confusion with respect to the original objections filed on November 14, 2003. *See* Exs. B and C to *Arrington Aff.* Since the Court rejected Pocatello's multiple initial objections they are irrelevant now anyway. *See* Ex. D to *Arrington Aff.* Moreover, when or how the objections were filed does not change the fact that Pocatello cannot meet the requirements of the accomplished transfer statute and has no legal or factual basis to collaterally attack its own licensed irrigation water rights in the SRBA. As such,

even if the Coalition's responses were somehow deficient, Pocatello cannot "prove ... the truth of the matter."

Finally, Pocatello is seeking attorneys' fees for drafting and filing its own summary judgment motion. Yet, Pocatello's response claims that its objections "raise triable issues as to pre-1987 changes in its water rights." *Pocatello Response* at 15. If Pocatello truly believes that its objections raise "triable issues", then it had no basis to file a motion for summary judgment under Rule 56(c). Pocatello cannot have it both ways. The Court should not force other parties to pay for a motion Pocatello itself admits does not qualify under Idaho's civil rules. The Coalition has a "reasonable ground" for its motion for summary judgment and had a "good reason" to deny Pocatello's various requests for admission. Accordingly, no sanction is warranted under the Rule 37 standard and Pocatello's request for attorneys' fees should be denied.

CONCLUSION

Pocatello's response to the Coalition's summary judgment motion is devoid of discussion of the true issues in this case. The law is clear, a party cannot use the SRBA to collaterally attack its own licensed water right under some alternative legal theory. Pocatello applied for, was granted, and has always used, its licensed water rights (#29-7118, #29-7119, #29-7431, and #29-0770) for irrigation purposes. Moreover, Pocatello freely admits there has never been any change to uses of these "irrigation" rights. Accordingly, Pocatello's purpose and place of use objections should be dismissed as a matter of law.

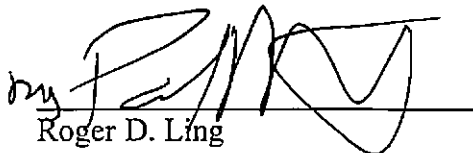
Next, this Court's rules of procedure prevent Pocatello from amending its claims by way of objections. Pocatello has not amended its original notices of claim for water rights #29-271, #29-272, and #29-273. A statement in a summary judgment motion that Pocatello considers its

surface water rights "as a group" does not excuse compliance with Idaho's adjudication statutes and this Court's rules of procedure. In addition, Pocatello cannot show that it created alternate points of diversion for its surface water rights. Accordingly, Pocatello's point of diversion objections to water rights #29-271, #29-272, and #29-273 must be dismissed as a matter of law.

Finally, disagreeing with Pocatello's unsupportable interpretation of the facts and law in this matter does not give rise to a claim for attorneys' fees. The Coalition had good reasons to deny Pocatello's assertions and the city has not proven any truth in its claims. Moreover, the Coalition's motion for summary judgment is based upon a "reasonable ground". As such, this Court should grant the Coalition's motion for summary judgment and deny Pocatello's motion for attorneys' fees.

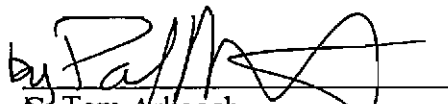
Dated this 21st day of December, 2006.

LING ROBINSON & WALKER


Roger D. Ling

*Attorneys for A & B Irrigation District and
Burley Irrigation District*

ARKOOSH LAW OFFICES CHTD.


C. Tom Arkoosh
Jay J. Kiiha

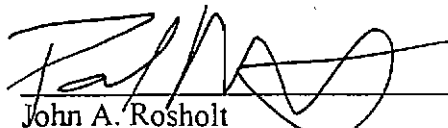
*Attorneys for American Falls Reservoir
District #2*

FLETCHER LAW OFFICES


W. Kent Fletcher

Attorneys for Minidoka Irrigation District

BARKER ROSHOLT & SIMPSON LLP


John A. Rosholt
John K. Simpson
Travis L. Thompson
Paul L. Arrington

*Attorneys for Milner Irrigation District, North
Side Canal Company, and Twin Falls
Canal Company*

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2006, I served a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT on the person(s) listed below, in the manner indicated:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Josephine P. Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for City of Pocatello

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 16th Street, Suite 500
Denver, CO 80202

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for City of Pocatello

Natural Resources Division Chief
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for State of Idaho

Environment & Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for United States of America

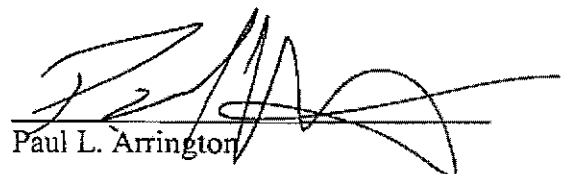

Paul L. Arrington

EXHIBIT A

Subcase Nos.:

- 29-00271
- 29-00272
- 29-00273
- 29-07118
- 29-07119
- 29-07431
- 29-07770

1. I am an attorney representing Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge. All documents referenced below were retrieved from the Idaho Department of Water Resources and the SRBA Court.

2. Attached hereto as Exhibit A is a true and correct copy of Pocatello's *Notice of Claim* for water right #29-4222.

3. Attached hereto as Exhibit B is a true and correct copy of an objection filed by Pocatello in subcase #29-07770 on November 14, 2003.

4. Attached hereto as Exhibit C is a true and correct copy of another objection filed by Pocatello in subcase #29-07770 on November 14, 2003.

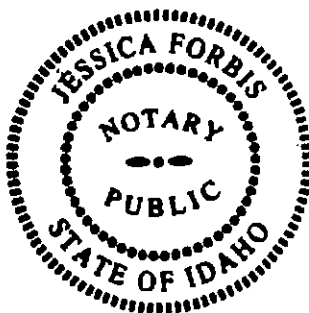
5. Attached hereto as Exhibit D is a true and correct copy of the first page of the *SRBA Subcase Summary Report 29-07770* in subcase #29-07770.

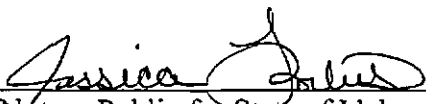
Further you affiant sayeth nought.

DATED this 21st day of December, 2006.


Paul L. Arrington

SUBSCRIBED AND SWORN to before me this 21 day of December, 2006.




Notary Public for State of Idaho
Residing at Twin Falls, Idaho
Commission Expires: 4/3/12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December, 2006, I served the foregoing S
AFFIDAVIT OF PAUL L. ARRINGTON upon the following:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Josephine P. Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for City of Pocatello

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 16th Street, Suite 500
Denver, CO 80202

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for City of Pocatello

David Barber
Natural Resources Division
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for State of Idaho

Environment & Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for United States of America

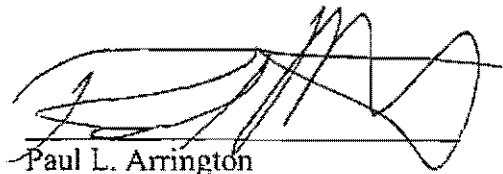

Paul L. Arrington

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-07118
29-07119
29-07431
29-07770

Exhibit A

3328

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-04222
Date Received: 3/28/1990 4/19/90
Receipt No: 0016458
Received By: RR

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCA TELLO
Address: P.O. BOX 4169
POCA TELLO, ID 83205
2. Date of Priority: JUN 16, 1898
3. Source: GIBSON JACK CREEK, SOUTH FO Trib. to: GIBSON JACK CREEK
GIBSON JACK CREEK PORTNEUF RIVER
4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
07S	34E	24	SE SW		BANNOCK

5. Description of diverting works:
DIVERSION DAM & PIPELINE TO RESERVOIR

6. Water is used for the following purposes:

Purpose	From	To	C.F.S. (or)	A.F.A.
MUNICIPAL	01/01	12/31	7.000	

7. Total Quantity Appropriated is:
7.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
M/CITY OF POCA TELLO

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
----------	-------	---------	------------	-----	-----	-------

11. Place of use in counties:

A29-04222

Page 1

Date: 04/16/90

MICROFILMED
NOV 13 1992
3029

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
SEE ATTACHMENT

14. Remarks:
SEE ATTACHMENT FOR REMARKS.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am MAYOR of
_____ Title
CITY OF POCA TELLO, that I have signed the foregoing
Organization
document in the space below as MAYOR of
_____ Title
CITY OF POCA TELLO and that the statements contained in the
Organization
foregoing document are true and correct.

Peter Christoff
Signature of Authorized Agent

MAYOR / CITY OF POCA TELLO
Title and Organization

4-17-90
Date

State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 18th day

of April 19 90

Konnie Lee Blackburn
Notary Public

Seal

Residing at Pocatello

My Commission Expires 8-18-91

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Castello will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Patrick D. Castello

Address 775 N. 8th Boise, ID 83702

Date 4/16/90

A29-04222

Page 3

Date:

04/16/90
MICROFILMED
NOV 13 1992

3331

REMARKS

The Claimant's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. Right to use such storage facilities is therefore claimed as a part of the surface or ground water claim asserted herein.

MICROFILMED

NOV 13 1992

3332

01-04000

BEEMAN & HOFSTETTER, P.C.

Counselors and Attorneys at Law

608 West Franklin Street

P. O. Box 1427

Boise, Idaho 83701-1427

Josephine P. Beeman

Dana L. Hofstetter

Telephone: (208) 388-8900

Facsimile: (208) 388-8400

E-mail: beehof@micron.net

May 11, 1998

RECEIVED

MAY 15 1998

Department of Water Resources
Eastern Region

Idaho Department of Water Resources
Eastern Regional Office
Attn: Adjudication Bureau
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

Re: Designation of "service area" as place of use
All SRBA Claims for the City of Pocatello (see attached)

Dear Adjudication Agent:

We request that this letter be included in the adjudication files for the City of Pocatello regarding the designation of place of use for the City's municipal water rights. Specifically, due to statutory amendments in 1996 addressing municipal water rights, the City of Pocatello believes it would be more accurate to describe the place of use of its municipal water rights as "within the service area for the City of Pocatello." This is based upon our review of *Idaho Code* § 42-202B, which provides that the service area can be designated as a place of use for a municipal water right when the service area, although in part outside the corporate limits for the city, is within the city's established planning area and shares a common water distribution system with lands located within the corporate limits. This is true for the City of Pocatello because the areas served outside the corporate limits are within the impact area recognized in the City's comprehensive plan, the State Local Planning Act, and share a common distribution system with lands located within the corporate limits. Although the 1996 statutory change occurred after the filing of the City's municipal water rights in the Snake River Basin Adjudication, the City believes the term "service area" would more accurately define the place of use when these rights are recommended in a Director's Report to the SRBA Court.

3333

Exhibit B

3034

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. <u>Attachment A</u>
	)	(37 of City of Pocatello's water rights,
	)	excluding the wastewater right)
Case No. 39576)	
)	
	)	STANDARD FORM 1
	)	OBJECTION
_____)	

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:
Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right."

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

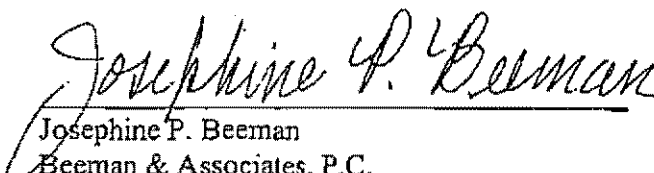
Place of use: Beneficial use of a municipal water right includes all actions necessary to comply with public health and safety standards. The City of Pocatello's municipal service area includes all lands necessary to complete the beneficial use of the municipal water right.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

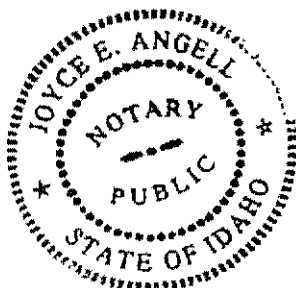
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

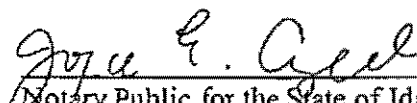
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

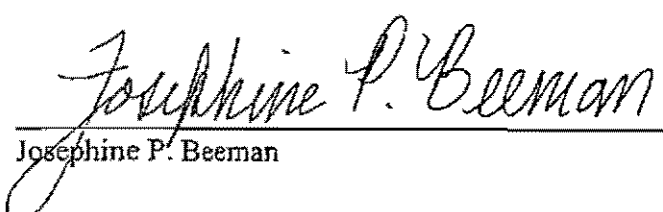
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Attachment A

29-271
29-272
29-273
29-2274
29-2338
29-2354
29-2382
29-2401
29-2499
29-4221
29-4222
29-4223
29-4224
29-4225
29-4226
29-7106
29-7118
29-7119
29-7222
29-7322
29-7375
29-7450
29-7502
29-7770
29-7782
29-11339
29-11344
29-11348
29-13558
29-13559
29-13560
29-13561
29-13562
29-13636
29-13637
29-13638
29-13639

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jp.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 14, 2003

*Via Facsimile (208) 736-2121
and U.S. Mail*

Diana Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
253 Third Avenue, North
Twin Falls, ID 83301

RECEIVED

NOV 14 2003

Department of Water Resources

Re: Objections to Director's Report for Irrigation and Other Water Rights in Basin 29

Dear Ms. Delaney:

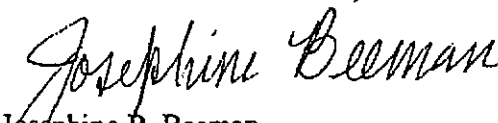
The City of Pocatello is filing objections to 40 water rights listed in the Director's Report for Irrigation and Other Water Rights in Basin 29.

We enclose a chart listing these 40 water rights and the grounds for objections to each. The bolding and notes on the chart explain which water rights are affected by the six group objections and which are affected by the 16 individual water right objections. We hope that this chart facilitates the court's handling of these objections.

The originals and copies for the court to conform have been sent by courier. Please call if we can be of additional help or answer questions. Thank you for your assistance in these matters.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

JPB:ja
cc: City of Pocatello
IDWR Document Depository
US Department of Justice
Office of Attorney General
Enclosure
Z:\1776\Obj\5998

3340

CITY OF POCATELLO OBJECTIONS FILED NOVEMBER 13, 2003

	Group Provisions	Municipal RGL 22	Provision No. 22	Corporation connection	Accumulated Transfer	Point of Diversion (Surface)	Name and address	Source	Quantity	Priority Date	Points of Diversion	Instream Flow	Purpose of Use	Period of Year	Place of Use
29 271	X	X				X									
29 272	X	X				X									
29 273	X	X				X									
29 2274	X	X		X	X										
29 2338	X	X		X	X										
29 2354	X	X													
29 2382	X	X													
29 2401	X	X	X	X											
29 2499	X	X	X	X											
29 4221	X	X	X	X						X					
29 4222	X	X				X			X						
29 4223	X	X	X	X					X						
29 4224	X	X	X	X											
29 4225	X	X	X	X											
29 4226	X	X	X	X					X						
29 7106	X	X	X	X											
29 7118	X	X											X		X
29 7119	X	X											X		X
29 7222	X	X													
29 7322	X	X	X	X											
29 7376	X	X		X	X										
29 7431	X				X				X				X		X
29 7450	X	X	X								X				
29 7502	X	X													
29 7710	X	X											X		X
29 7782	X	X		X											
29 11339	X	X	X	X											
29 11344	X	X	X								X				
29 11348	X	X	X	X											
29 11608									X		X		X		X
29 12877							X	X	X	X	X	X	X	X	X
29 13558	X	X	X	X						X					
29 13559	X	X	X	X											
29 13560	X	X	X	X											
29 13561	X	X	X	X											
29 13562	X	X	X	X											
29 13636	X	X													X
29 13637	X	X	X	X											
29 13638	X	X	X								X				
29 13639	X	X	X	X						X					

Note 1: Six group objections affect multiple water rights (objections in bold).

Note 2: Sixteen objections are to individual water rights (water right numbers in bold).

Exhibit C

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. <u>See Attachment A</u>
	)	(All 38 of City of Pocatello's
	)	basin 29 water rights)
Case No. 39576)	
	)	STANDARD FORM 1
	)	OBJECTION
_____)	

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See "Reasons supporting objections" below.
3. ☒ **Quantity**
Should be: See "Reasons supporting objections" below.
4. ☒ **Priority Date**
Should be: See "Reasons supporting objections" below.
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: See "Reasons supporting objections" below.
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

All 38 of the City of Pocatello's basin 29 water rights should include the following remark regarding the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

All 38 of the City of Pocatello's basin 29 water rights should be decreed with the following general provisions:

Separate Streams:

For purposes of water distribution in the Portneuf River drainage basin, water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Portneuf River, and will be administered separately from all other water rights in Basin 29:

Mink Creek

Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

Separate Administration: The City's 38 water rights, including water right no. and source, should be decreed with the following general provisions:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Basin 29 in accordance with the prior appropriation doctrine as established by Idaho law:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Swan Falls: This objection is parallel to the Swan Falls objections in Basin 37 (Consolidated Subcase No. 37-02499). Because the Swan Falls objections in Basin 37 have not been designated a basin-wide issue, this objection addresses the Swan Fall protections for water rights in Basin 29.


No decree entered in the SRBA will supercede, preempt, modify, terminate, extend or otherwise affect the legal force and effect of the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract (so long as the Agreement and Contract remain in effect), Consent Judgments in *Idaho Power Co. v. State of Idaho*, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) and *Idaho Power Co. v. State of Idaho*, Case No. 62237 (Fourth Judicial Dist. Mar. 9, 1990), and the 1982 State Water Plan (as amended in 1985).

VERIFICATION

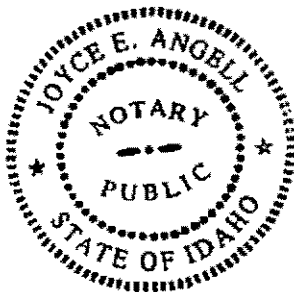
State of Idaho)
)ss.
County of Ada)

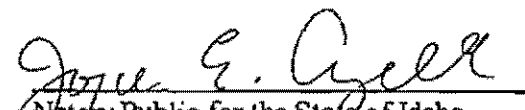
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003




Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

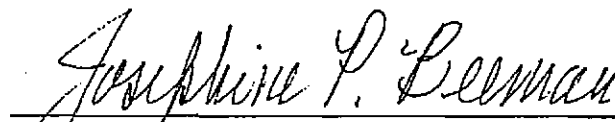
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Attachment A

[List of each water right]

29-271
29-272
29-273
29-2274
29-2338
29-2354
29-2382
29-2401
29-2499
29-4221
29-4222
29-4223
29-4224
29-4225
29-4226
29-7106
29-7118
29-7119
29-7222
29-7322
29-7375
29-7431
29-7450
29-7502
29-7770
29-7782
29-11339
29-11344
29-11348
29-13558
29-13559
29-13560
29-13561
29-13562
29-13636
29-13637
29-13638
29-13639

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 14, 2003

*Via Facsimile (208) 736-2121
and U.S. Mail*

Diana Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
253 Third Avenue, North
Twin Falls, ID 83301

RECEIVED
NOV 14 2003
Department of Water Resources

Re: Objections to Director's Report for Irrigation and Other Water Rights in Basin 29

Dear Ms. Delaney:

The City of Pocatello is filing objections to 40 water rights listed in the Director's Report for Irrigation and Other Water Rights in Basin 29.

We enclose a chart listing these 40 water rights and the grounds for objections to each. The bolding and notes on the chart explain which water rights are affected by the six group objections and which are affected by the 16 individual water right objections. We hope that this chart facilitates the court's handling of these objections.

The originals and copies for the court to conform have been sent by courier. Please call if we can be of additional help or answer questions. Thank you for your assistance in these matters.

Sincerely,

BEEMAN & ASSOCIATES, P.C.

Josephine Beeman
Josephine P. Beeman

JPB:ja
cc: City of Pocatello
IDWR Document Depository
US Department of Justice
Office of Attorney General
Enclosure
Z:\17760bj\3998

3349

CITY OF POCAHELLO OBJECTIONS FILED NOVEMBER 13, 2003

	General Provisions	Municipal Provisions	Provisions Necessary	Interconnections	Accomplished	Point of Diversion (Surface)	Name and address	Source	Quantity	Priority Date	Points of Diversion	Instream Flow	Purpose of Use	Period of Year	Place of Use
29 271	X	X				X									
29 272	X	X				X									
29 273	X	X				X									
29 2274	X	X		X	X										
29 2338	X	X		X	X										
29 2354	X	X													
29 2382	X	X													
29 2401	X	X	X	X											
29 2499	X	X	X	X											
29 4221	X	X	X	X						X					
29 4222	X	X				X			X						
29 4223	X	X	X	X					X						
29 4224	X	X	X	X											
29 4225	X	X	X	X											
29 4226	X	X	X	X					X						
29 7106	X	X	X	X											
29 7118	X	X											X		X
29 7119	X	X											X		X
29 7222	X	X													
29 7322	X	X	X	X											
29 7375	X	X		X	X										
29 7431	X								X				X		X
29 7450	X	X	X								X				
29 7502	X	X													
29 7710	X	X											X		X
29 7782	X	X		X											
29 11339	X	X	X	X											
29 11344	X	X	X								X				
29 11348	X	X	X	X											
29 11609									X		X		X		X
29 12877							X	X	X	X	X	X	X	X	X
29 13558	X	X	X	X						X					
29 13559	X	X	X	X											
29 13560	X	X	X	X											
29 13561	X	X	X	X											
29 13562	X	X	X	X											
29 13636	X	X													X
29 13637	X	X	X	X											
29 13638	X	X	X								X				
29 13639	X	X	X	X						X					

Note 1: Six group objections affect multiple water rights (objections in bold).

Note 2: Sixteen objections are to individual water rights (water right numbers in bold).

Exhibit D

SRBA

SUBCASE SUMMARY REPORT 29-07770

Return to SRBA Home Page

SRBA
12-21-2006

SUBCASE SUMMARY REPORT

HTML12

SUBCASE: 29-07770 FILE#: 00313
CLAIMANT: CITY OF POCATELLO
PO BOX 4169

POCATELLO ID 83205
STATUS: TRIAL SET SPECIAL MASTER: BILYEU, BRIGETTE
WATER SOURCE: GROUND WATER
ISSUES: SOURCE OF WATER
QUANTITY OF WATER USED
PRIORITY DATE
PURPOSE OF USE DESCRIPTION
PLACE OF USE OR IRRIGATED ACRES IN EACH 40 A.
0

**** PARTIES INVOLVED ****

CITY OF POCATELLO	C ATTY: JOSEPHINE P. BEEMAN
CITY OF POCATELLO	O ATTY: JOSEPHINE P. BEEMAN
STATE OF IDAHO	R ATTY: NATURAL RESOURCES DIV CHIEF
UNITED STATES OF AMERICA	R ATTY: US DEPARTMENT OF JUSTICE
AMERICAN FALLS RESERVOIR	R ATTY: C. THOMAS ARKOOSH
TWIN FALLS CANAL COMPANY	R ATTY: TRAVIS L THOMPSON
NORTH SIDE CANAL COMPANY	R ATTY: TRAVIS L THOMPSON
MILNER IRRIGATION DISTRICT	R ATTY: TRAVIS L THOMPSON
A & B IRRIGATION DISTRICT	R ATTY: ROGER D LING
BURLEY IRRIGATION DISTRICT	R ATTY: ROGER D LING
MINIDOKA IRRIGATION DISTRI	R ATTY: W. KENT FLETCHER
AMERICAN FALLS RESERVOIR	I ATTY: C. THOMAS ARKOOSH
MILNER IRRIGATION DISTRICT	I ATTY: TRAVIS L THOMPSON
NORTH SIDE CANAL COMPANY	I ATTY: TRAVIS L THOMPSON
TWIN FALLS CANAL COMPANY	I ATTY: TRAVIS L THOMPSON
A & B IRRIGATION DISTRICT	I ATTY: ROGER D LING
BURLEY IRRIGATION DISTRICT	I ATTY: ROGER D LING
MINIDOKA IRRIGATION DISTRI	I ATTY: W. KENT FLETCHER

**** ROA ENTRIES ****

11-14-2003	OBJ 01 F/B CITY OF POCATELLO	RB	01-16-2004	0001
11-18-2003	ORIGINAL OBJ 1 SUBMITTED TO COURT 11/14/03			
	DID NOT CONFORM TO OBJ FORMAT			
11-19-2003	AMENDED OBJ 02 F/B CITY OF POCATELLO	RB	01-16-2004	0002
01-15-2004	RESPONSE TO OBJ 0002 F/B STATE OF IDAHO		01-15-2004	0001
01-16-2004	RESPONSE TO OBJ 0002 F/B UNITED STATES OF AME			0002
01-30-2004	ORIGINAL CLAIM FILED			
03-24-2004	NOTICE SETTING INITIAL HEARING	IS	04-21-2004	0230
04-21-2004	HEARING HELD	HH	04-21-2004	0230

3352

Josephine P. Beeman #1806
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
jo.beeman@beemanlaw.com

Sarah A. Klahn
William A. Hillhouse II
White & Jankowski, LLP
511 16th St., Suite 500
Denver, CO 80202
303-595-9441
303-825-5632 (Facsimile)
sarahk@white-jankowski.com

Attorneys for City of Pocatello

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
DEC 21 2006	
By _____	Clark Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
)	
	)	CITY OF POCATELLO'S REPLY BRIEF IN
	)	SUPPORT OF THE CITY'S NOVEMBER 30, 2006
Case No. 39576	)	MOTION FOR SUMMARY JUDGMENT ON
	)	MUNICIPAL PURPOSE OF USE, INTERCON-
	)	NECTION, AND INJURY UNDER I.C. § 42-1425

INTRODUCTION

On November 30, 2006, Pocatello moved for Summary Judgment on the issues of (1) municipal purpose of use, (2) interconnection, and (3) injury under §42-1425.¹ The Idaho Rules of Civil Procedure provide that summary judgment is appropriate only "if the pleadings,

¹ Pocatello moved for summary judgment under I.R.C.P. 56 that Mink Creek, Gibson Jack Creek, Lower Portneuf River Valley Aquifer (LPRVA), the Snake River, and the Eastern Snake Plain Aquifer (ESPA) are interconnected sources of water, and there is no 42-1425 injury from the alternate points of diversion in operation for the City's interconnected culinary system and the water rights it served as of November 19, 1987. Page 3, *Pocatello's Motion for Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. §42-1425*.

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depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact.” I.R.C.P. 56(c). The SWC and the State have submitted two very complex responses to Pocatello’s November 30th *Motion for Summary Judgment*. Although both responses raised a variety of arguments, the undisputed truth still remains that (1) “municipal purposes” comprise a wide variety of water uses, not just the provision of drinking water, (2) Pocatello’s use of its water rights to comply with federal laws fits within the purview of this broad definition of “municipal purposes”, (3) Mink Creek, Gibson Jack Creek, the ESPA, and the LPRVA are interconnected sources of water, and (4) neither the State nor the SWC has proffered any proof of Section 42-1425 injury to their water rights as a result of Pocatello’s accomplished transfers claimed in the SRBA; and Pocatello’s expert reports provide foundation for this Court’s determination that no demonstrable Section 42-1425 injury as of November 19, 1987, from Pocatello’s accomplished transfers.

For the purposes of this reply, Pocatello’ will address the issue of injury first, then interconnection, and then municipal purpose of use.

I. STATEMENT OF THE CASE

A. Nature of the proceedings.

This controversy relates to the determination of Pocatello's thirty-eight state law SRBA claims.

B. Course of the proceedings related to the issue of injury.

Special Master Bilyeu issued an *Order on Summary Judgment* on August 18, 2006. The Special Master summarized the arguments as follows:

Pocatello argues that the condition placed on its accomplished transfer is improper. Pocatello’s argument is twofold. First, Pocatello argues that the condition is improper because these subcases were not “remanded” to IDWR as set for in I.C. § 42-1425(2)(a).

Second, Pocatello argues that the condition is improper as a matter of law because it seeks to prevent **potential** injury rather than actual injury.

* * * * *

Pocatello assert[ed] that its accomplished transfers did not injure water rights existing on the date of the change. IDWR concluded that water rights existing on the date of the change were injured. . . .

Pocatello reads the 706 *Report* language as improperly looking at prospective, not actual injury. . . . The injury IDWR discusses is to the priority of rights on a given source. . . . Depending on conditions such as precipitation and weather, the damages may not appear immediately.

(Emphasis in original.)

Pocatello's subcases were then remanded to IDWR for the purpose of allowing Pocatello to present additional evidence and information regarding the condition and the Special Master retained concurrent jurisdiction. The remand has been stayed by order of the court, at the joint request of IDWR and Pocatello to facilitate negotiation and settlement. (*Order Granting Pocatello's Motion to Stay Deadlines in Summary Judgment Order*, granted September 1, 2006)

The governing trial schedule has not been stayed and Pocatello seeks to narrow the matters for trial by obtaining judgment on certain factual and legal matters clarified through the discovery process. Specific discovery information is set forth below.

Pocatello served the Surface Water Coalition (SWC) and the State with the First Set of Discovery Requests on July 21, 2006. On the issue of Idaho Code §42-1425 injury, Pocatello asked the following interrogatories, requests for production, and requests for admission to both the SWC and the State:

Interrogatory No. 8: Please DESCRIBE any information you have regarding the individual water rights "injured" by POCATELLO'S use of the wells located at the points of diversion recommended by IDWR for this water right.

Interrogatory No. 10: List any water rights YOU allege to be injured by an accomplished transfer of this water right pursuant to Idaho Code §42-1425.

Interrogatory No. 11: Describe the nature of the injury you allege occurred because of the accomplished transfer of this water right pursuant to Idaho Code §42-1425.

Request for Production No. 8: Produce any DOCUMENTS related to YOUR response to Interrogatory No. 11.

Request for Admission No. 1: Admit that this water right has never been administered by the STATE in response to the injury alleged in Interrogatory No. 11.

Interrogatory No. 12: If YOU DENY Request for Admission No. 1, please STATE THE BASIS for YOUR DENIAL.

Interrogatory No. 13: Please IDENTIFY each PERSON who has information that RELATES TO YOUR CONTENTION that is the subject of Interrogatory No. 12.

Request for Production No. 9: Produce any DOCUMENTS related to YOUR response to Interrogatory No. 12.

Request for Admission No. 2: Admit that YOU have no DOCUMENTS or other INFORMA-TION alleging or claiming an injury as described in your response to Interrogatory No. 11 to the water rights listed in your response to Interrogatory No. 7.

Interrogatory No. 14: If YOU DENY Request for Admission No. 2, please STATE THE BASIS for YOUR DENIAL.

Interrogatory No. 15: Please IDENTIFY each PERSON who has information that RELATES TO YOUR CONTENTION that is the subject of Interrogatory No. 14.

Request for Production No. 10: Produce any DOCUMENTS related to YOUR response to Interrogatory No. 14.

The State served Pocatello with the State's *First Set of Discovery Requests* on July 21, 2006. In its *First Set of Discovery Requests*, the State did not make any specific inquiries on Idaho Code § 42-1425 injury in the discovery it served to Pocatello.

The SWC did not serve discovery requests to Pocatello or the State.

The State served its *Response to Pocatello's First Set of Discovery Requests* on September 25, 2006. The State provided the following answer to Pocatello's questions on injury from accomplished transfers:

[The State] has not identified any water rights that would be injured by an accomplished transfer of this water right. Idaho relies upon the determination in the Director's Report, as supplemented in the Supplemental Director's Report that an injury would occur to existing water rights by a transfer of this water right.

Specifically, the State admitted the following:

- Other than the hypothetical injury addressed in the April 2006 Supplemental Director's Report, the State admitted that it has "no other documents alleging or claiming injury" from Pocatello's accomplished transfers at issue.
- The State has no information on the cone of depression created by Pocatello's use of the wells located at the points of diversion recommended by IDWR, on water rights that withdraw from the LPRVA within the cone of depression.
- The State has no information on the maximum amount of water ever withdrawn by Pocatello at the wells at the points of diversion recommended by IDWR.
- The State has no information on individual water rights "injured" by Pocatello's use of these wells located at the points of diversion recommended by IDWR.

The SWC provided its *Response to Pocatello's First Set of Discovery Requests* on September 25, 2006. The SWC provided the following answers to Pocatello's questions on injury:

- The SWC responded to injury questions with two answers: (1) "[t]he Coalition is without sufficient information to answer the interrogatory as this time" and (2) "[t]he Coalition has made reasonable inquiry and the information known or readily available is insufficient to admit or deny the request . . ."
- The SWC declared it was "without sufficient information" when asked to list any allegedly injured water rights under 42-1425.
- When asked to describe any information regarding individual water rights "injured" by Pocatello's use of the wells located at IDWR's recommended points of diversion, the SWC declared it was "without sufficient information to answer the interrogatory completely...."

3037

- The SWC could not proffer any information on the cone of depression created by Pocatello's use of the wells located at the points of diversion recommended by IDWR or the ground water rights that withdraw water from the LPRVA within those cones of depression because, "no hydrologic analysis has been made."

Pocatello served *Spronk Water Engineer Expert Report* to the State and the SWC on September 29, 2006. The report provided the following conclusions on injury:

- "[I]t is unlikely that Pocatello's alternative point of diversion operations had an significant impact to neighboring wells prior to November 19, 1987.
- "[D]iversion of the City's surface water rights at the City wells does not adversely affect other water users, the City's claim for alternate points of diversion for its surface water rights should be approved."
- "[T]here is no material difference in the depletions to surface water from when the City is pumping its senior priorities first or when the City is pumping using its alternate points of diversion."

The SWC served its *Rebuttal Expert Report* on November 3, 2006. The report considered the conclusions of Pocatello's *Spronk Water Engineer Expert Report* and determined the following:

- "[A]ll of the City of Pocatello's ground water and surface water rights should be administered as interconnected sources."
- "[T]here would likely not be negative impacts to the ESPA resulting just from the changes in diversion points."

Pocatello served its *Rebuttal Report* on December 1, 2006. The report considered the conclusion of the SWC's *Rebuttal Expert Report* and determined the following:

- "[T]here is no disagreement that the ground water and surface water sources of the Snake River and the Portneuf River and its tributaries are interconnected."
- "The Surface Water Coalition claims there is a change in '*timing and magnitude of both Portneuf River flow and ground water underflow from the basin*', but provides no evidence or analysis to quantify the alleged changes or that the changes result in injury to the Surface Water Coalition water rights."

II. INJURY

A. The August 18th *Order on Summary Judgment* does not preclude summary determination of 42-1425 injury as of November 19, 1987.

In addressing whether to strike IDWR's conditions that were the object of Pocatello's May 5th *Motion for Summary Judgment on IDWR's Authority Under 42-1425*, this Court's August 18 *Order on Summary Judgment* stated the following concerning injury:

- Immediate injury to priority resulting in future damages appears to be just what IDWR was trying to prevent with the condition.
- The 706 *Report* raises genuine issues of material fact on the injury issue.
- IDWR apparently recommended conditions to prevent injury to existing water rights.

On the issue of the conditions, the Court ruled, "[w]hether IDWR's conclusion on injury is correct is a matter for trial."²

Following the August 18 order and as a result of the discovery discussed *supra* at pages 3-6, Pocatello's motion for summary judgment on the issue of 42-1425 injury is limited to the time frame ending November 19, 1987. Pocatello believes this is an appropriate limitation based on the absence of facts demonstrating any injury (and/or damages) as of November 19, 1987.

B. Pocatello is not required to comply with the legal "standards" promulgated by the Transfer Processing Memo to address injury.

The State alleged that Pocatello must address the "standards set forth in the Transfer Processing Memorandum"³ in order to show "whether a proposed transfer will injure other water rights."⁴ The State cites the Memo as the "correct legal standard" for determining Section 42-

² *Order on Summary Judgment*, Special Master Bilyeu, August 18, 2006, pages 5-6.

³ "Transfer Processing Policies and Procedures," IDWR Administrator's Memorandum, October 30, 2002. (Interim Policies and Procedures Currently Applicable for Applications to Transfer Ground Water in the Eastern Snake River Plain Only ("Transfer Processing Memo")).

⁴ *State's Response Memorandum in Opposition to Pocatello's Motion For Summary Judgment*, page 7.

1425 injury, but this argument is flawed on three levels. First, the Memo explicitly states that it does not apply to transfers under Section 42-1425. Second, the Memo's "rules" have not been adopted under the Idaho Administrative Procedures Act (IAPA) and therefore cannot be enforced as law. Third, even assuming *arguendo* that the Memo were applicable to Pocatello's accomplished transfers under 42-1425, the State's response and the April 2006 Supplemental Director's Report each misapply the "immediate and direct connection" language to Pocatello's SRBA claims.

1. The Transfer Processing Memo explicitly states that it does not apply to transfers under §42-1425.

The State's argument fails because the Memo explicitly states that it does not apply to transfers under Section 42-1425.⁵ Instead, the Memo applies to transfers of rights pursuant to Section 42-222.⁶ Under the heading "When a Transfer is not Required," the Memo specifically states:

an application for transfer is not needed when an accomplished change to a water right or an enlargement of a right has been claimed in an adjudication in accordance with the provisions of Sections 42-1425 or 42-1426, *Idaho Code*.⁷

Thus, because Pocatello has effectively transferred its rights via an accomplished transfer under Section 42-1425, the Memo explicitly does not apply, and Pocatello does not need to show congruence with the Memo.

⁵ Transfer Processing Memo, pages 3 and 4.

⁶ Transfer Processing Memo, pages 1 and 4.

⁷ Transfer Processing Memo pages 3 - 4.

2. The Transfer Processing Memo outlines administrative rules that have not been adopted under the Idaho Administrative Procedure Act and therefore cannot be enforced as law.

The State referred to the “standards”⁸ set forth in the Memo as the “correct legal standard”⁹ or “test”¹⁰ which Pocatello must apply in order to disprove any showing of injury. The Memo itself calls the standards “policies and procedures [which] are to be followed . . .”¹¹ As a matter of law, the Memo cannot be applied because “an agency action characterized as a rule must be promulgated according to statutory directives for rulemaking in order to have the force and effect of law.”¹² Put another way, if the State wants the dictates of the Memo to be applied as the “correct legal standard,” those dictates must first be properly adopted in compliance with the IAPA.¹³ Because the Memo has not been adopted in compliance with the IAPA, (and explicitly does not apply to 42-1425 transfers), the State’s requirement of “an immediate and direct connection between the surface source and the well”¹⁴ cannot be enforced as law.

In 2003,¹⁵ the Idaho Supreme Court addressed this necessary compliance with the IAPA when it struck down Idaho’s Total Maximum Daily Load Standards (TMDL’s) because the

⁸ State’s Response Memorandum in Opposition to Pocatello’s Motion For Summary Judgment, page 6, 7, and 8.

⁹ State’s Response Memorandum in Opposition to Pocatello’s Motion For Summary Judgment, pages 5, 6.

¹⁰ State’s Response Memorandum in Opposition to Pocatello’s Motion For Summary Judgment, page 7.

¹¹ Transfer Processing Memo, page 1.

¹² *Asarco v. State of Idaho*, 138 Idaho 719, 723, 69 P.3d 139, 143 (2003).

¹³ Section 67-5231 of the IAPA declares administrative rules “void unless adopted in compliance with the IAPA.” *Asarco v. State of Idaho*, 138 Idaho 719, 723, 69 P.3d 139, 143 (2003) citing Idaho Code Section 67-5231.

¹⁴ See State’s Response Memorandum in Opposition to Pocatello’s Motion For Summary Judgment page 5, 7, and 8 quoting the April 2006 Supplemental Director’s Report at page 11.

¹⁵ *Asarco v. State of Idaho*, 138 Idaho 719, 69 P.3d 139 (2003)

TMDL's were a "rule," and the TMDL's could only be valid if the Idaho Department of Environmental Quality (DEQ) had promulgated them "in accordance with the IAPA."¹⁶ The *Asarco* analysis is directly on point for IDWR's Transfer Processing Memo.

The *Asarco* decision first determined that the statutory definition of a "rule" was "too broad to be workable,"¹⁷ and set forth six (6) specific characteristics that indicate when agency action amounts to a rule:

- wide coverage
- applied generally and uniformly
- operates only in future cases
- prescribes a legal standard or directive not otherwise provided by the enabling statute
- expresses agency policy not previously expressed
- is an interpretation of law or general policy¹⁸

The Court then applied these 6 "characteristics" to the facts and held that "the establishment of the TMDL involved 'rulemaking.' Furthermore, because the TMDL is properly considered a rule, it is invalid pursuant to the IAPA."¹⁹

Just like DEQ's TMDL's, the "standards" in IDWR's Memo are agency rules which are invalid pursuant to the IAPA. First, the Memo has "wide coverage" and explicitly applies to all Section 42-222 transfers.²⁰ Second, the Memo's "fifty percent depletion" requirement is "generally applicable" as a "numerical [interconnection] limit or budget for a given water

¹⁶ *Asarco v. State of Idaho*, 138 Idaho 719, 723, 69 P.3d 139, 143 (2003).

¹⁷ *Asarco v. State of Idaho*, 138 Idaho 719, 723, 69 P.3d 139, 143 (2003).

¹⁸ *Asarco v. State of Idaho*, 138 Idaho 719, 723, 69 P.3d 139, 143 (2003), citing *Woodland Private Study Group v. State of New Jersey*, 533 A.2d 387 (N.J. 1987).

¹⁹ *Asarco v. State of Idaho*, 138 Idaho 719, 725, 69 P.3d 139, 145 (2003).

²⁰ See, *Asarco v. State of Idaho*, 138 Idaho 719, 723, 69 P.3d 139, 143 (2003), and Transfer Processing Memo page 1.

body.”²¹ Third, the Memo “operates only in future cases” evaluating prospective injury to other water rights from proposed transfers.²² Fourth, the Memo’s “fifty percent depletion” requirement is a “quantitative legal standard” not provided by any enabling statute.²³ Fifth, even if the Memo is “nothing more than a planning tool” or interim guidelines, the “fifty percent depletion” requirement is still an “expression of agency policy not previously addressed.”²⁴ And finally, the Memo’s standards for evaluating transfers is really an interpretation of existing law: it evaluates whether a transfer will run afoul of the Prior Appropriation Doctrine within the Idaho Constitution.²⁵ Thus, just as in *Arasco*, IDWR’s Memo is an example of agency “rulemaking” which is unenforceable as a matter of law because it was not adopted pursuant to the IAPA.

In sum, the Transfer Processing Memo is NOT the “correct legal standard” to be applied to Pocatello or to any other accomplished transfer in the SRBA. Pocatello does not need to show congruence with the dictates of the Transfer Processing Memo.

3. Even if the Transfer Processing Memo were applicable law, the State’s Response and April 2006 Supplemental Director’s Report misapply its language to Pocatello’s SRBA claims.

Both the State’s *Response Memorandum in Opposition to City of Pocatello’s Motion for Summary Judgment (Response)* and the April 2006 Supplemental Director’s Report include a block quote that “an immediate and direct connection between the surface source and the well”

²¹ See, *Asarco v. State of Idaho*, 138 Idaho 719, 723, 69 P.3d 139, 143 (2003), and Transfer Processing Memo page 20.

²² See, *Asarco v. State of Idaho*, 138 Idaho 719, 725, 69 P.3d 139, 145 (2003), and Transfer Processing Memo page 1.

²³ See, *Asarco v. State of Idaho*, 138 Idaho 719, 725, 69 P.3d 139, 145 (2003).

²⁴ See, *Asarco v. State of Idaho*, 138 Idaho 719, 725, 69 P.3d 139, 145 (2003), and Transfer Processing Memo page 1.

²⁵ See, *Asarco v. State of Idaho*, 138 Idaho 719, 725, 69 P.3d 139, 145 (2003), and Transfer Processing Memo page 1.

must exist before a transfer is allowed.²⁶ The actual phrase is found in the Memo's requirements for a change of source, as from a surface water source to a ground water source:

5c. Injury to Other Water Rights

(6) Change of Source. Whether the source would be changed from ground water to surface water, or from surface water to ground water.

An application for transfer proposing such a change in source is not approvable unless the ground water and surface water sources have a direct and immediate hydraulic connection (at least 50 percent depletion in original source from depletion at proposed point of diversion in one day). The existing point of diversion and proposed point of diversion must be proximate such that the diversion and use of the water from the proposed point of diversion would have substantially the same effect on the hydraulically-connected source as diversion and use of water from the original point of diversion. (emphasis added.)

Two comments are appropriate. First, this is a change of source standard. The City is not changing its source from surface water to ground water.²⁷ Pocatello is claiming both sources: the ground water is an alternate source and the City's wells are alternate points of diversion, when the water is physically and legally available. Second, since there was no IAPA rulemaking, the 50% depletion reference has no foundation.

III. INTERCONNECTION

A. The issue of interconnection remains undisputed by both the SWC and the State.

The State's *Response*, the SWC's *Response to the City of Pocatello's Motion for Summary Judgment (Response)*, and the April 2006 Supplemental Director's Report all address the issue of interconnection. These submissions offer a variety approaches to the issue of

²⁶ See State's *Response Memorandum in Opposition to Pocatello's Motion For Summary Judgment* page 5, 7, and 8 quoting the April 2006 Supplemental Director's Report at page 11.

²⁷ The State argues Pocatello is attempting "to transform an unreliable surface water supply to a ground water supply that will always be there." State's *Response Memorandum in Opposition to the City of Pocatello's Motion for Summary Judgment*, page 9.

interconnection. The State and the April 2006 Supplemental Director's Report have consistently maintained that the waters are interconnected. The SWC's approach comes full circle: first the SWC quotes the Basin-Wide 5 decision on interconnection in its *Joint Motion to Participate*, but then during discovery the SWC claims to not understand the meaning of "interconnected," and finally alleges in its *Response* that the issue of interconnection is moot because Basin-Wide 5 established that all water rights are administered as interconnected.

Since Pocatello seeks summary judgment on interconnection as a part of its claim that the City's interconnected wells are alternate points of diversion for its surface water rights, it is easy to become confused by the SWC's statements that interconnection is "moot" because all water rights are administered as interconnected. Pocatello is already aware of the administration of interconnected sources that occurs outside of the SRBA; but at the SRBA, the issue of interconnection relates to the definition of source. When interconnected sources such as the LPRVA and Mink Creek have both served as sources for a water right, the water right should be decreed with that information.²⁸ These are adjudicatory claims in the SRBA. They involve sources whose interconnection is without dispute: Gibson Jack Creek, Mink Creek, the LPRVA, and the ESPA are interconnected.²⁹

1. The April 2006 Supplemental Director's Report states the waters are interconnected.

The April 2006 Supplemental Director's Report cites the interconnected sources provision in SRBA decision in Basin-Wide Issue 5: "[A]ll other water rights within Basin 29 will be administered as connected sources of water in the Snake River Basin in accordance with the

²⁸ Spronk Report, pages 17-19.

²⁹ These are adjudicatory claims in the SRBA. They involve sources whose interconnection is without dispute.

prior appropriation doctrine as established by Idaho law.”³⁰ Referring specifically to Basin 29, the Report states, “[s]urface and ground water sources in Basin 29 are interconnected.”³¹ On the issue of Pocatello’s interconnected wells before November 19, 1987, the Report is unequivocally clear: “[t]he Department found that there were 22 interconnected wells that serve Pocatello for the ‘city proper’ as depicted on Map 1 before November 19, 1987.”³²

2. The State admits the waters are interconnected.

In discovery, the State readily admitted that “Mink Creek and the Lower Portneuf River Valley Aquifer are interconnected sources of water.”³³ The State further admitted that “Gibson Jack Creek and the Lower Portneuf River Valley Aquifer are interconnected sources of water.”³⁴ Now in its *Response*, the State still does not contest the issue of interconnection. Specifically, the State highlights the conclusion of Pocatello’s *Expert Report* (The Spronk Report) that the waters are interconnected.³⁵ The State does not argue that the Spronk Report is wrong about interconnection, but rather, the State criticizes Pocatello for not applying the “correct legal standard” to address the issue of interconnection. (See discussion of Transfer Processing Memo

³⁰ April 2006 Supplemental Director’s Report, page 9.

³¹ April 2006 Supplemental Director’s Report at 10.

³² April 2006 Supplemental Director’s Report at 13. The Report then moved on to explain that “[a]s of 1987, the City had 22 interconnected wells that provided municipal water to the city’s service area. See Map 1.

³³ Request for Admission no. 1, State’s Answers to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, pages 9 and 21.

³⁴ Request for Admission no. 1, State’s Answers to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 105.

³⁵ State’s *Response Memorandum in Opposition to Pocatello’s Motion For Summary Judgment*, pages 4 and 5.

supra pages 7-11) Nowhere in its response does the State contradict its admissions in discovery that the waters are interconnected.

3. The SWC admits the waters are interconnected.

Throughout these proceedings, the SWC has repeatedly changed its position on interconnection. This quixotic chronology requires clarification: At first, the SWC submitted a *Memorandum in Support of Joint Motion to Participate* which stated:

All water in the Snake River Basin is interconnected, unless a partial decree issued by the SRBA Court indicates the water derives from a separate source. A&B Irrigation Dist. V. Idaho Conservation League, 131 Idaho 411, 421-22 (1998). The SRBA Court plainly recognized the interconnection of tributary ground and surface water sources in the Snake River Basin in its Basin-Wide 5 decision issue in 2001. (emphasis added.)³⁶

Then, during discovery, the SWC refused to admit that Mink Creek or Gibson Jack Creek were interconnected with the LPRVA, citing several reasons:

It is impossible to determine what Pocatello means by the term 'interconnected.' The Coalition has made a reasonable inquiry and information known or readily obtainable is insufficient to determine if groundwater flows to Mink Creek and the extent that Mink Creek contributes to ground water or to determine whether the 'Lower Portneuf River Valley Aquifer' exists or the extent that Mink Creek is a connected source of water and therefore denies the same. In addition, the Coalition has not been able to determine the locations of hydraulic interconnectivity, if any, or to quantify the hydraulic interconnectivity. (emphasis added)³⁷

The SWC's refusal in discovery to admit to any level of hydraulic interconnection is at odds with the Basin-Wide 5 decision which the SWC relied on in its Motion to Participate and again in its Response to Pocatello's second Motion for Summary Judgment:

³⁶ SWC's *Memorandum in Support of Joint Motion to Participate*, March 2, 2006, page 3.

³⁷ Request for Admission no. 1, SWC's Answers to Pocatello's Discovery, Exhibit E to Affidavit of Joyce Angell, in support of *Pocatello's Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, pages 5 and 21.

the [issue of] interconnection of certain waters is moot pursuant to the Presiding Judge's decision in the *Basin-Wide 5* proceedings and this Court's order dismissing Pocatello's "separate streams" objections with prejudice on July 14, 2006. As determined by the Presiding Judge in the *Basin-Wide 5* proceedings, 'all water rights within [Basin 29] will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law. (emphasis added)³⁸

During discovery, the SWC relied (almost exclusively) on the April 2006 Supplemental Director's Report,³⁹ but would not answer any discovery questions pertaining to interconnection. However, in response to Pocatello's current Motion for Summary Judgment on interconnection, the SWC now states that the Report "clearly indicates that the surface water and groundwater sources in Basin 29 are interconnected . . ." (emphasis added)⁴⁰

The SWC admits the interconnection, and the City's Motion For Summary Judgment should be granted.

4. The Spronk and Brockway Reports concur that the sources are interconnected.

The SWC's expert *Rebuttal Report* (The Brockway Report) demonstrates an understanding of interconnection and concurs that the sources are interconnected:

[t]he hydrogeology of the lower Portneuf River and tributaries and the aquifer underlying the lower Portneuf area shows that these are interconnected sources and are tributary to the Snake River and/or the Eastern Snake Plain aquifer. " (Emphasis added.)⁴¹

³⁸ SWC Response to the City of Pocatello's Motion for Summary Judgment, page 3.

³⁹ SWC's Answers to Pocatello's Discovery Requests, Exhibit E to Affidavit of Joyce Angell, in support of Pocatello's Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425, pages 3, 4, 8, 9, 14, 15, 19, 20, 23, and 24.

⁴⁰ SWC Response to the City of Pocatello's Motion for Summary Judgment, page 14.

⁴¹ SWC Rebuttal Expert Report by Brockway Engineering Inc., Exhibit C to Affidavit of Joyce Angell, in support of Pocatello's Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425, page 2.

The SWC's *Rebuttal Report* also implies there is a hydraulic connection from Mink Creek and Gibson Jack Creek to the LPRVA:

If, in fact, ground water is pumped in lieu of a surface water diversion six miles away from the ground water extraction with the same early priority as the surface right, there will be significant differences in the timing and magnitude of both the Portneuf River flow and ground water underflow from the basin.⁴²

Furthermore, Pocatello's *Rebuttal Report* considered the statements in the SWC's *Rebuttal Report* and determined that "there is no disagreement that the groundwater and surface water sources of the Snake River and Portneuf River and its tributaries are interconnected. (emphasis added)⁴³ Thus, both expert reports concur that the sources are interconnected.

B. Pocatello is not required to comply with the legal "standards" promulgated by the Transfer Processing Memo to address interconnection.

In its *Response*, the State argues that the Memo requires Pocatello to show "an immediate and direct connection between the surface source and well" in order to address the issue of interconnection. However, the Transfer Processing Memo does not have the force and effect of law as explained earlier in this Reply. (See discussion of Transfer Processing Memo, *supra*, pages 7-11.)

IV. MUNICIPAL PURPOSE OF USE

A. Idaho Code § 42-1425 authorizes changes for water rights that pre-date the November 19, 1987 SRBA deadline.

The SWC argues that Pocatello "cites no legal authority that would allow this Court to change licensed irrigation water rights into municipal water rights" and that "Pocatello cannot

⁴² SWC *Rebuttal Expert Report* by Brockway Engineering Inc., Exhibit C to Affidavit of Joyce Angell, in support of Pocatello's Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425, page 4.

⁴³ Spronk Water Engineers *Expert Rebuttal Report*, page 2, attached as Exhibit C to the Affidavit of Celeste Thaine.

collaterally attack its licenses in the SRBA.”⁴⁴ Instead, Pocatello must “file an application for transfer with IDWR under Idaho Code § 42-222.”⁴⁵ This assertion is wrong. Section 42-1425 allows for the transfer of water rights that predate the SRBA cutoff date of November 19, 1987.

1. All water rights pre-date the SRBA cutoff date of November 19, 1987.

The priority dates for water rights 29-7118, 29-7119, 29-7431, and 29-7770 pre-date the SRBA cutoff date.⁴⁶

B. Pocatello’s use of water rights 29-7118, 29-7119, 29-7431, and 29-7770 fits within the broad definition of “municipal purposes.”

1. “Municipal” purpose of use is broadly defined and includes many uses such as irrigation.

Pocatello has four licensed water rights for irrigation which the City claimed as municipal water rights in the SRBA⁴⁷ because each water right “is used by the City in its capacity and function as a municipality.”⁴⁸ As also cited by the State in its response brief, Idaho Code § 42-202(B)(6) defines “municipal purposes” as:

water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider. (emphasis added)⁴⁹

⁴⁴ SWC’s Response to the City of Pocatello’s Motion for Summary Judgment, page 2.

⁴⁵ SWC’s Memorandum in Support of Summary Judgment, page 7.

⁴⁶ The priority dates are as follows: 29-7118 is April 11, 1973. 29-7119 is April 11, 1973. 29-7431 is December 29, 1977. 29-7770 is May 21, 1984.

⁴⁷ SRBA claims 29-7118, 29-7119, 29-7770, and 29-7431.

⁴⁸ The quoted language is from Pocatello’s SRBA objections to the irrigation purpose of use which IDWR recommended to the SRBA court for 29-7118, 29-7119, 29-7770, and 29-7431.

⁴⁹ The actual pre-SRBA use was municipal for 29-7118, 29-7119, 29-7431, and 29-7770. Under 42-1425 the SRBA Court can decree this actual use without collaterally attacking the licenses for 29-7118, 29-7119, 29-7431, and 29-7770. For this reason, Judge Wood’s Facility Volume decision is distinguishable.

In 1997, in subcase 34-10030 (City of Arco), Special Master Bilyeu issued a master's report that considered 42-202(B) in light of the common law. The report states that 42-202(B) codifies, but does not limit the common law. The report adopts a broad view of "municipal purpose of use", stating that when used to describe the purpose of use of a water right, "municipal" means:

a right used by a municipality for the benefit of its inhabitants. A 'municipal' right may be used for numerous purposes which benefit the city's inhabitants. The court finds this definition of 'municipal' persuasive and adopts it here. Thus 'municipal' water rights encompass a broad range of uses to which such water rights are used for the benefit of the municipality's inhabitants. (emphasis added)⁵⁰

Therefore, both the statute⁵¹ and common law⁵² in Idaho recognize that "municipal" purposes encompass a broad array of uses that can include, but are not limited to, irrigation and requirements for compliance with federal laws.

2. Sandy Downs Rodeo Arena: an example of how broadly "municipal purposes" is applied to water rights.

Not only does statutory law and the common law broadly define "municipal purpose" but the definition has been applied liberally as well. There are water rights held by Idaho municipalities that are used for a wide array of purposes, all of which are described as "municipal" purposes. For example, the City of Idaho Falls owns ground water right 25-7009 with an August 7, 1970 priority date. The *Notice of Claim* for this water right states that it is used to manage "Sandy Downs Rodeo Arena, Restrooms, Drinking Fountains, Etc." However, the water right is licensed for "municipal" purposes, and recommended by IDWR for "municipal"

⁵⁰ *In Re SRBA*, subcase 34-10030 Special Master's Report April 8, 1997, at page 2. The SF5 cited by the SWC was entered in 1995 regarding withdrawal of objections by the United States in this subcase.

⁵¹ Idaho Code Section 42-202(b).

⁵² *In Re SRBA*, subcase 34-10030 Special Master's Report April 8, 1997

purposes.⁵³ Thus, even the management of a rodeo arena has been categorized as fitting the definition of a water right held for “municipal” purposes.

3. Pocatello’s use of water rights 29-7118, 29-7119, 29-7431, 29-7770 fits the broad definition of “municipal purposes.”

It is undisputed that “municipal purposes” has been broadly defined by statute and the common law. (See discussion *supra* pages 17-18) However the State alleges in its *Response* that Pocatello “has made no effort to demonstrate that the uses under water right nos. 29-7118, 29-7119, and 29-7431 come within this definition of municipal purposes.”⁵⁴ The State then refers to the April 2006 Supplemental Director’s Report to conclude that these water rights are only used for “the traditional irrigation of a cropland” and the “traditional land disposal of sewage sludge.”⁵⁵ These statements are contradicted by the State’s own admissions and the April 2006 Supplemental Director’s Report. They must be clarified.

In its answers to Pocatello’s discovery,⁵⁶ the State readily admitted the following facts:

1. A municipal purpose of use “may include multiple uses such (sic) domestic, commercial, and other uses.”⁵⁷
2. “[A] municipal water right may be used for many uses including irrigation and airport safety.”⁵⁸

⁵³ See *Notice of Claim, License, and Recommendation* for water right no. 25-7009, attached as Exhibit C to Affidavit of Celeste Thaine.

⁵⁴ State’s *Response Memorandum in Opposition to the City of Pocatello’s Motion for Summary Judgment*, page 10.

⁵⁵ State’s *Response Memorandum in Opposition to the City of Pocatello’s Motion for Summary Judgment*, page 10.

⁵⁶ In the 76 pages of discovery questions that Pocatello sent out to the SWC and the State, Pocatello did not ask these specific questions regarding 29-7431. However, Pocatello believes the answers would have been the same. Additionally, Pocatello does not contest the April 2006 Supplemental Director’s Report findings that 29-7431 “allows the City to apply effluent from its wastewater treatment plant to cropland . . .” April 2006 Supplemental Director’s Report, page 20.

⁵⁷ Request for Admission No. 3, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 170.

3. The “primary use” of water right 29-7118 “is to satisfy customer needs within the area served by Pocatello.”⁵⁹
4. The water used under water right 29-7119 “is used within the corporate limits of Pocatello.”⁶⁰

In its *Response*, the State further agreed that “a municipal water right may include irrigation” and that “the City is a municipality that may exercise a municipal water right.”⁶¹ The State even quoted Section 42-202(b)’s broad definition of “municipal purposes”.

The April 2006 Supplemental Director’s Report states that water rights nos. 29-7118 and 29-7119 are used “to irrigate cropland at the city-owned airport.”⁶² Water right 29-7431 is used by the City “to apply effluent from its wastewater treatment plant to cropland . . .”⁶³ Exhibit L to the April 2006 Supplemental Director’s Report also includes an IDWR *Memorandum Decision and Order* on 29-7431 which states:

[T]he Federal Water Pollution Control Act [FWPCA] was passed by Congress. This act required that the best practicable control technology be implemented by July 1, 1977, to control the discharge of pollutants into the navigable waters of the United States.

⁵⁸ Request for Admission No. 4, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, pages 170, 181.

⁵⁹ Request for Admission No. 1, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 168.

⁶⁰ Request for Admission No. 1, State’s Answer to Pocatello’s Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 179.

⁶¹ State’s *Response Memorandum in Opposition to the City of Pocatello’s Motion for Summary Judgment*, page 9.

⁶² April 2006 Supplemental Director’s Report, page 19.

⁶³ April 2006 Supplemental Director’s Report, page 20.

After extensive review of the available control technology, the City of Pocatello and the J.R. Simplot Company determined that the land application of their waste effluent would be the most practical and least costly alternative.⁶⁴

Pocatello also provided the State with a copy of the Farm Lease between Pocatello and Edward Alvin Smith which stated that water rights nos. 29-7118 and 29-7119 were used to irrigate the airport in compliance with Federal Aviation Administration (FAA) laws.⁶⁵ Thus, it is undisputed that Pocatello uses water right nos. 29-7118, 29-7119, and 29-7431 to irrigate airport land in compliance with FAA laws, and for the land application of wastewater effluent in compliance with the FWPCA. It is further undisputed that usage of these water rights to comply with federal law fits within this broad statutory and common law definition of “municipal,” as well as the broad application of the term “municipal.”

C. Because water rights 29-7118, 29-7119, 29-7431, and 29-7770 are used for “municipal purposes,” they can be changed under Idaho Code § 42-1425 to a more appropriate description of their uses.

Just like the Highlands Golf course water right (29-2382), Pocatello’s water rights can be changed from irrigation to municipal.⁶⁶ In the present case, Pocatello is not arguing a change in use for 29-7118, 29-7119, 29-7431, and 29-7770. Instead, Pocatello is arguing the use has always been within the broad definition of “municipal”, and that legally these rights must be

⁶⁴ September 8th, 1978 IDWR *Memorandum Decision and Order*, Attached as Exhibit L to the April 2006 Supplemental Director’s Report.

⁶⁵ Farm Lease, Exhibit G to Affidavit of Joyce Angell in support of *Pocatello’s Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*; SRBA claim file and IDWR license file of 29-7118 and 29-7119, Exhibit K to April 2006 Supplemental Director’s Report.

⁶⁶ See discussion of this water right on pages 3 and 4 of *Pocatello’s Response Brief to the Surface Water Coalition’s Motion for Summary Judgment*.

changed to a more appropriate descriptor. To the extent this corrects an error of law in the licenses IDWR issues for these rights, IDWR is not estopped to correct its errors of law.⁶⁷

The SWC's makes an enlargement argument in their response brief, stating that a "municipal water right is typically defined for a year-round season of use, and can be used for a variety of purposes within a city's service. Transferring an irrigation water right into a municipal right unquestioningly expands the nature and scope of this right."⁶⁸ While it is true that some municipal rights are decreed for year-round use, the Highlands Golf Course water right 29-2382 demonstrates that this is not always the case. This water right was changed from irrigation to a municipal purpose of use under an accomplished transfer theory, but retained a volume limitation and a seasonal period of use.⁶⁹

1. Water Right 29-7770 has a 1984 priority date, and a 1984 date of application, thus making a §42-1425 transfer appropriate.

The State argues that water right 29-7770 was licensed "too late" to qualify for a change in purpose of use under Section 42-1425.⁷⁰ The SWC argues that the only "truth of the matter" revealed by the April 2006 Supplemental Director's Report is that "Pocatello's water right #29-7770 was licensed for irrigation purposes on January 2, 2003." (emphasis in SWC

⁶⁷ The state and its agencies cannot be estopped by the mistakes of law or fact of its agents. *See, Kelso & Irwin, P.A. v. State Ins. Fund*, 134 Idaho 130, 138, 997 P.2d 591, 599 (2000). *See also, Sagewillow, Inc. v. Idaho Dept. of Water Resources*, 138 Idaho 831, 845, 70 P.3d 669, 683 (2003).

⁶⁸ *SWC Response to the City of Pocatello's Motion for Summary Judgment*, page 9.

⁶⁹ See discussion of this water right on pages 3 and 4 of *Pocatello's Response Brief to the Surface Water Coalition's Motion for Summary Judgment*.

⁷⁰ *State's Response Memorandum in Opposition to the City of Pocatello's Motion for Summary Judgment*, page 11.

original)⁷¹ Both the State and the SWC argue that changing this water right will thus constitute an impermissible “collateral attack.”⁷² These arguments are mistaken in fact as well as law.

The April 2006 Supplemental Director’s Report reveals the following information on water right 29-7770: (1) The priority date for 29-7770 is May 21st, 1984. (2) The *Application* for this permit was filed on May 10th, 1984. (3) The *Notice of Application* was filed on May 21st, 1984. (4) An *Interim Water Permit Request* was filed on March 27th, 1987, stating that the water permit was used for the irrigation of farmland, for the purpose of utilizing and applying domestic sewage sludge as crop nutrient and soil conditioner.⁷³ The municipal use began before November 19, 1987, and is appropriately claimed under Section 42-1425 and alternatively as a correction of legal error. The date the license was issued, January 2, 2003, is not relevant. Thus, water right 29-7770 was not licensed “too late”⁷⁴ to be changed under Section 42-1425.

As discussed above (see supra 19-21), it is undisputed that Pocatello’s usage of its water rights to comply with federal law fits within this broad statutory and common law definition of “municipal,” as well as the broad application of the term “municipal.” The following facts relating to water right 29-7770 are not in dispute:⁷⁵

1. Pocatello uses water right 29-7770 “for the land application of the City’s biosolids under Pocatello’s EPA-approved Biosolids program and NPDES permit . . .” and this land application of biosolids produced by Pocatello’s

⁷¹ SWC Response to the City of Pocatello’s Motion for Summary Judgment, page 5.

⁷² State’s Response Memorandum in Opposition to the City of Pocatello’s Motion for Summary Judgment, page 11; and SWC Response to the City of Pocatello’s Motion for Summary Judgment, page 2.

⁷³ See Exhibit M to the April 2006 Supplemental Director’s Report.

⁷⁴ The State argued: “Since the date of the license post dates the commencement date of the adjudication, any claimed change in purpose of use after the issuance of a license was too late.” See, State’s Response Memorandum in Opposition to City of Pocatello’s Motion for Summary Judgment, page 11.

⁷⁵ For a discussion of these admission, see Pocatello’s Brief in Support of Motion for Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury.

waste water plant is performed "as a part of the City's municipal responsibility to treat and dispose of domestic sewage."⁷⁶

2. Pocatello requested IDWR to license water right 29-7770 as a "municipal" water right and that "Pocatello uses this water rights as part of its obligations as a municipality to treat and dispose of domestic sewage."⁷⁷

Thus, Pocatello's use of 29-7770 is also for "municipal purposes" and may be changed pursuant to Section 42-1425.

CONCLUSION

In conclusion, Pocatello respectfully requests that the Special Master grant summary judgment on the following:

1. Water rights 29-7119, 29-7118, 29-7770, and 29-7431 are to be decreed with a municipal purpose of use, consistent with their use by the City of Pocatello in its broad capacity and function as a municipality.
2. Mink Creek, Gibson Jack Creek, the LPRVA, the ESPA, and the Snake River as interconnected sources of water.
3. No 42-1425 injury has been proved for Pocatello's alternate points of diversion in operation for its interconnected culinary system as of November 19, 1987.

⁷⁶ Request for Admission Nos. 1 and 2, State's Answer to Pocatello's Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello's Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 240.

⁷⁷ Request for Admission Nos. 3 and 4, State's Answer to Pocatello's Discovery, Exhibit D to Affidavit of Joyce Angell, in support of *Pocatello's Motion For Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury Under I.C. § 42-1425*, page 241

DATED this 21st day of December 2006.

BEEMAN & ASSOCIATES, P.C.
Attorneys for the City of Pocatello

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December 2006, I caused a true copy of the foregoing **CITY OF POCA TELLO'S REPLY BRIEF IN SUPPORT OF THE CITY'S NOVEMBER 30, 2006 MOTION FOR SUMMARY JUDGMENT ON MUNICIPAL PURPOSE OF USE, INTERCON-NECTION, AND INJURY UNDER I.C. § 42-1425** to be served on the following by U.S. First Class Mail unless indicated as faxed or hand delivered:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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ARKOOSH LAW OFFICES, CHTD.
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REPRESENTED BY:
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ATTORNEY GENERAL'S OFFICE
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BOISE, ID 83711-4449

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FLETCHER LAW OFFICE
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BURLEY, IDAHO 83318

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

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BARKER ROSHOLT & SIMPSON
113 MAIN AVE. WEST, SUITE 303
TWIN FALLS, IDAHO 83301-6167


Josephine P. Beeman

ZA1776\100\LINDISC\SN7442

3379

EXHIBIT A

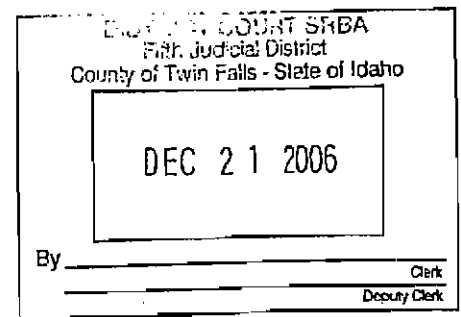
Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
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29-04221
29-04222
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Attorneys for City of Pocatello



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
)	
In Re SRBA	)	AFFIDAVIT OF CELESTE THAINE IN
	)	SUPPORT OF CITY OF POCA TELLO'S REPLY
Case No. 39576	)	BRIEF IN SUPPORT OF THE CITY'S
	)	NOVEMBER 30TH MOTION FOR SUMMARY
	)	JUDGMENT ON MUNICIPAL PURPOSE OF
_____	)	USE, INTERCONNECTION, AND INJURY
	)	UNDER I.C. § 42-1425

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

I, Celeste Thaine, state that I am employed by the law office of Beeman & Associates, P.C., and I make the following statement on the basis of my personal knowledge.

1. I attest that the following attached documents are true and correct copies of original documents, or where the documents are not the original copies, they are copies of documents I obtained from the electronic database developed and maintained by the Idaho Department of Water Resources (IDWR) for SRBA claim 25-7009 or from a CD provided by IDWR containing the Director's Report for Irrigation and Other Uses & Federal Reserved Right 25-13715 for IDWR Basin 25 issued on January 26, 2005:

Exhibit B: Spronk Water Engineers, Inc. Expert *Rebuttal* Report Dated December 1, 2006 Prepared for the City of Pocatello, Claimant

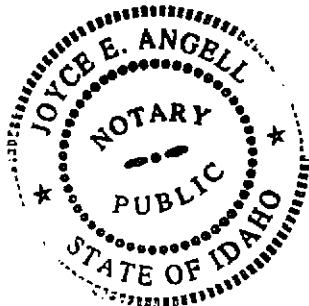
Exhibit C: Notice of Claim to a Water Right Acquired Under State Law A25-07009, Water Right License No. 25-7009, and IDWR's Recommended Water Right Acquired Under State Law for 25-7009.

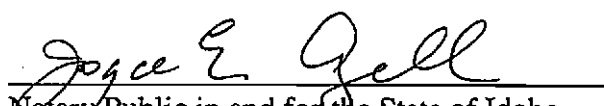
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 21st day of December 2006.


Celeste Thaine

SUBSCRIBED AND SWORN to before me this 21st day of December 2006.




Notary Public in and for the State of Idaho
Residing in: Boise, Idaho
My Commission Expires: 7-29-08

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December 2006, I caused a true copy of the foregoing **AFFIDAVIT OF CELESTE THAINE IN SUPPORT OF CITY OF POCA TELLO'S REPLY BRIEF IN SUPPORT OF THE CITY'S MOTION FOR SUMMARY JUDGMENT ON MUNICIPAL PURPOSE OF USE, INTERCONNECTION, AND INJURY UNDER I.C. § 42-1425** to be served on the following by U.S. First Class Mail unless indicated as faxed, hand delivered, or emailed:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

STATE OF IDAHO
REPRESENTED BY:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
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BARKER ROSHOLT & SIMPSON
113 MAIN AVE. WEST, SUITE 303
TWIN FALLS, IDAHO 83301-6167



Josephine P. Beeman

1776/100/Liv/Disc/SI/7469

EXHIBIT A

Subcase Numbers

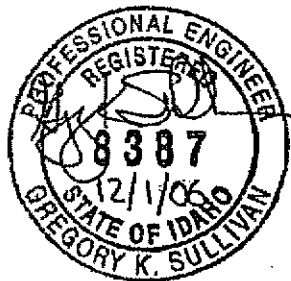
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

SPRONK WATER ENGINEERS, INC.
EXPERT *REBUTTAL* REPORT
DATED DECEMBER 1, 2006
PREPARED FOR THE CITY OF
POCATELLO, CLAIMANT



Spronk Water Engineers, Inc.
1000 Logan Street
Denver, Colorado 80203

3335

Spronk Water Engineers, Inc.
Expert Rebuttal Report
Dated December 1, 2006
Prepared For
The City of Pocatello,
Claimant

1.0 INTRODUCTION

On behalf of the City of Pocatello, Spronk Water Engineers, Inc. ("SWE") prepared an Expert Report dated September 29, 2006, that was filed with the SRBA Court in accordance with the Seventh Amended Trial Scheduling Order. The Expert Report addressed the following disputed issues with regards to recommendations by the Idaho Department of Water Resources ("Department") for the City of Pocatello's ("Pocatello", the "City") State-law claims for water rights in the Snake River Basin Adjudication ("SRBA"):

- A condition proposed by the Department to limit the City's claims for alternate points of diversion for its interconnected municipal wells.
- The Department's recommended denial of the City's claim for alternate points of diversion for its surface water rights on Mink Creek and Gibson Jack Creek.
- Miscellaneous issues related to identification of the wells included in the City's interconnected municipal well systems, and a subset of these wells that were the subject of prior formal administrative transfers approved by the Department.

On November 2, 2006, Brockway Engineering PLLC, on behalf of the Milner Irrigation District, Minidoka Irrigation District, American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, North Side Canal Company, and Twin Falls Canal Company (the "Surface Water Coalition"), filed a Rebuttal Expert Report to the SWE Expert Report dated September 29, 2006 with the SRBA Court ("SWC Rebuttal Report"). The SWC Rebuttal Report describes opinions of

the Surface Water Coalition expert regarding Pocatello's claimed water rights.

SWE has reviewed the SWC Rebuttal Report, and provides the following rebuttal opinions regarding opinions offered by the SWC expert.

2.0 SWC EXPERT REBUTTAL REPORT DATED NOVEMBER 2, 2006

Alternate Points of Diversion for Surface Water

Opinion

Page 2 and 3. *"The City of Pocatello claims that City wells should be considered as alternate points of diversion for the claimed water rights from Mink Creek and Gibson Jack Creek. There is no hydrologic evidence to support this contention or to argue that there is no change or impact to other water users if this were allowed. If, in fact, ground water is pumped in lieu of a surface water diversion six miles away from the ground water extraction with the same early priority as the surface right, there will be significant differences in timing and magnitude of both the Portneuf River flow and ground water underflow from the basin."*

Response

Page 2 of the SWC Rebuttal Report includes the statement, *"The hydrogeology of the lower Portneuf River and tributaries and the aquifer underlying the lower Portneuf area shows that these are interconnected sources and are tributary to the Snake River and/or the Eastern Snake Plain aquifer...."*. Based on this statement, there is no disagreement that the ground water and surface water sources of the Snake River and the Portneuf River and its tributaries are interconnected.

The Surface Water Coalition claims there is a change in *"timing and magnitude of both Portneuf River flow and ground water underflow from the basin."*, but provides no evidence or analysis to quantify the alleged changes or that the changes result in injury to the Surface Water Coalition water rights.

An analysis using the Department's "Enhanced-Ground Water Rights Transfer Spreadsheet (version 2.2)" ("Transfer Spreadsheet"), was performed to demonstrate that diversion of the City's surface water rights at the City's wells will not injure the Surface Water Coalition water rights. Diversion at the original points of diversion was assumed to result in an immediate depletion of surface water flow. Diversion at the ground water alternate points of diversion results in delayed surface water depletions. The delayed surface water depletions resulting from diversions at the ground water alternate points of diversion were calculated using the Department's Transfer Spreadsheet. Municipal return flows from exercise of the surface water rights were ignored because they would be the same in both scenarios.

Figure 1 compares the annual depletions resulting from diversion of the surface water rights at (1) the original points of diversion, and (2) at the alternate points of diversion at the City's wells. The annual depletions are expressed as a percent of the total annual diversion. The results of the analysis show that diversions of the City's surface water rights at the claimed ground water alternate points of diversion result in delayed impacts to surface water flows as compared with the immediate impacts that would result from diversion of the City's surface water rights at their original decreed locations. These delayed impacts cause transient reductions in depletions to the surface streams, resulting in a transient benefit to downstream surface water users. Once the depletions from ground water use reaches steady state, they are essentially the same as the depletions that would have resulted had the water rights continued to be diverted at the original points.

The City historically used its surface water supplies year-around at relatively constant rates. The surface water rights are similarly used when exercised at the ground water alternate points of diversion. Constant year-around pumping of the surface water rights at the alternate points of diversion will result in constant year around stream depletions. These depletions will increase and eventually reach a steady state that is equal to the rate of pumping. This constant year-around depletion rate will match the uniform rate of diversion (and stream depletion) that would occur if the City diverted the surface water rights at the original points of diversion. As a result, exercise of the City's surface water rights at the ground water alternate points of diversion will not result in

a material change in the seasonal timing of stream depletions to the detriment of downstream surface water users.

Multiple Alternate Points of Diversion

Opinion

Page 3. *"If approved, priority administration would require determination of the instantaneous discharge from each well at all times to determine whether diversion rates were within the priority. If the City was diverting in excess of the rate allowed under the cumulative priority of all rights, then either the Department or the City would have to decide which well or wells would be shut off or curtailed. This would be extremely difficult to regulate or administer."*

Response

The City's cumulative diversion rate at its alternate points of diversion will not exceed the cumulative in-priority diversion rate for the water rights associated with its interconnected wells.

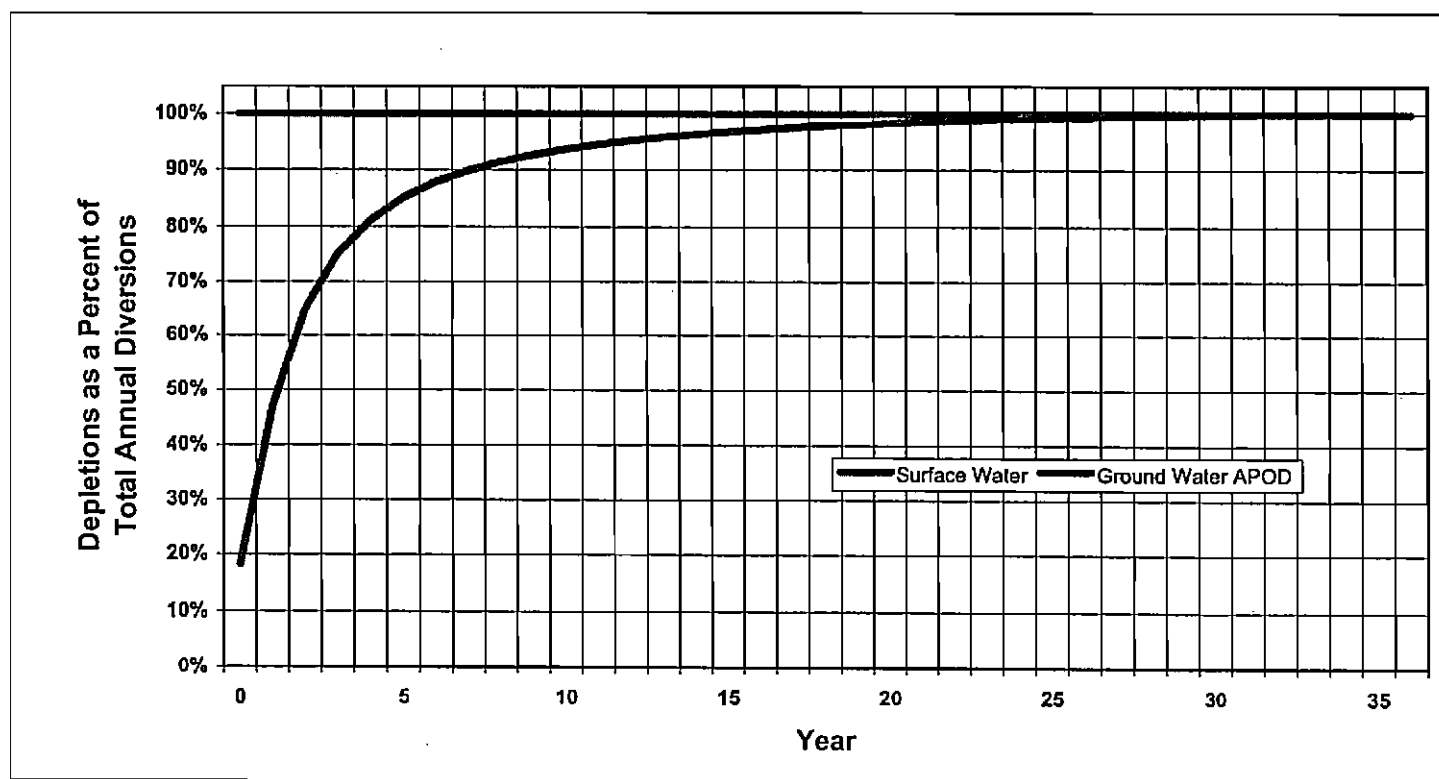
Opinion

Page 3. *"The Department's decision to require a condition on each water right showing the date of first appropriation and the well number and location is justified. Any decision by the City to pump at significantly greater rates than historical practice from later priority wells could result in injury to local ground water users, especially those with earlier priority wells."*

Response

The City will not pump its wells as alternate points of diversion at diversion rates that are greater than the rates claimed for the original water right(s) associated with each well.

Figure 1
Annual Depletions Resulting from Surface Water Diversions and
Ground Water Pumping at Alternate Points of Diversion
City of Pocatello



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A25-07009
Date Received: 9/22/1989
Receipt No: E010755
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF IDAHO FALLS
Address: C/O HOLDEN, KIDWELL,
HAHN & CRAPO
P.O. BOX 50130
IDAHO FALLS, ID 83405
208-523-0620

2. Date of Priority: AUG 7, 1970

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
01N	38E	9	NE	NW			BONNEVILLE

5. Description of diverting works:
WELL & PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
MUNICIPAL	01/01	12/31	0.230		

7. Total Quantity Appropriated is:
0.230 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
M/SANDY DOWNS RODEO ARENA, RESTROOMS, DRINKING FOUNTAINS, ETC.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01N	38E	9	NE	NW		MUNI	

A25-07009

Page 1

Date: 02/05/91

MICROFILMED
NOV 10 1992

3391

11. Place of use in counties: BONNEVILLE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am _____ of
_____, that I have signed the foregoing
document in the space below as _____ of
_____ and that the statements contained in the
foregoing document are true and correct.

Signature of Authorized Agent

Title and Organization

Date

MICROFILMED
NOV 10 1992

State of Idaho)
County of _____) ss.

Subscribed and sworn (or affirmed) before me this _____ day

of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

17. Notice of Appearance:

Notice is hereby given that I, _____ will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

WATER RIGHT LICENSE

THIS IS TO CERTIFY, that CITY OF IDAHO FALLS

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Municipal	from January 1 to December 31 at	0.23 cfs and	N/A
	from to at	cfs and	
	from to at	cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 0.23 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed N/A acre feet per year, said waters to be diverted within the Nicoma, Sec. 9, Twp. 1N, Rge. 38E, S. 1N. in the County of Bonneville

Description and location of place of use:

[illegible]

Total number of acres irrigated

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or places of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 28 day of May, 1980.

Director

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 25-7009

NAME AND ADDRESS: CITY OF IDAHO FALLS
C/O HOLDEN KIDWELL HAHN CRAPO
PO BOX 50130
IDAHO FALLS ID 83405

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.230 CFS

PRIORITY DATE: 08/07/1970

POINT OF
DIVERSION: T01N R38E S9 SENWNW Within BONNEVILLE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	1/01 12/31	0.230 CFS

PLACE OF USE: MUNICIPAL Within BONNEVILLE County

T01N R38E S09	NENW	T01N R38E S09	NWNW
---------------	------	---------------	------

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

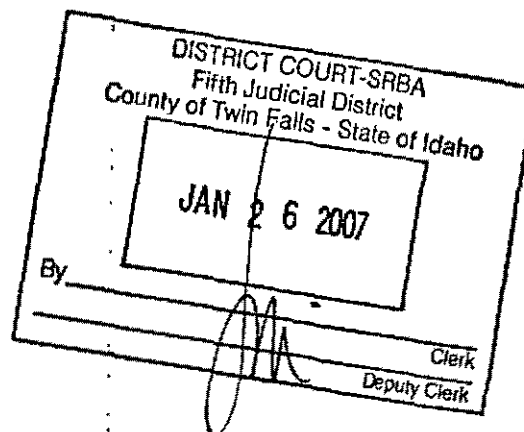
RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

PROPERTY IS ALSO KNOWN AS SANDY DOWNS.

Josephine P. Beeman #1806
Beeman & Associates, P.C.
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Attorneys for City of Pocatello



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
)	
	)	PARTIES' STIPULATION REGARDING
Case No. 39576	)	IDAHO CODE § 42-1425 REMAND
)	

The City of Pocatello, the State of Idaho, the American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company list the following facts regarding the 38 subcases listed in Exhibit A:

1. The 38 subcases are set for trial beginning February 26, 2007. **Eighth Amended Trial Scheduling Order** (November 21, 2006).
2. January 18, 2007, the Court requested Pocatello to provide a list of the specific subcases subject to remand to the Idaho Department of Water Resources (IDWR)

pursuant to Idaho Code § 42-1425, in accordance with the Court's August 18, 2006 Order on Summary Judgment.

3. Pocatello's list identified 24 of the 38 subcases as subject to the remand to IDWR. Pocatello's SRBA Claims Subject To I.C. § 42-1425 Remand Per August 18, 2006 Order On Summary Judgment (dated January 19, 2007 and filed in each of the 38 subcases).

4. IDWR scheduled an Idaho Code § 42-1425 remand for all 38 subcases to begin January 29, 2006. IDWR's January 19, 2006 Notice of Fact-Finding Hearing (attached).

5. During the pre-trial conference on January 24, 2006, following discussion with IDWR and the parties who were present, the court stated its conclusion that the remand in the August 18, 2006 Order on Summary Judgment applied to every subcase in Exhibit A that has an Idaho Code § 42-1425 accomplished transfer element.

6. IDWR will file a *Supplemental 706 Report* with the SRBA court on or before February 9, 2007.

Based on the foregoing facts, and in order to allow all Idaho Code §42-1425 issues to proceed to trial, the City of Pocatello, the State of Idaho, the American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company stipulate as follows:

1. For purposes of these 38 subcases only, if Idaho Code § 42-1425 imposes the requirement of remand from this Court for a hearing at IDWR, the parties waive any and all objections to the hearing, or lack thereof, required by Idaho Code § 42-1425 (2)(a) and all

parties stipulate that the hearing, or lack thereof, may not be raised as an issue seeking review or appeal from the trial in this action.

2. The determination of Idaho Code § 42-1425 issues will proceed in accordance with the existing trial schedule and the record before the court.

Respectfully submitted this 26th day of January 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of January 2007, I caused a copy of the foregoing document to be served by U.S. First Class Mail on:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
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DIRECTOR OF IDWR
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BOISE, ID 83720-0098

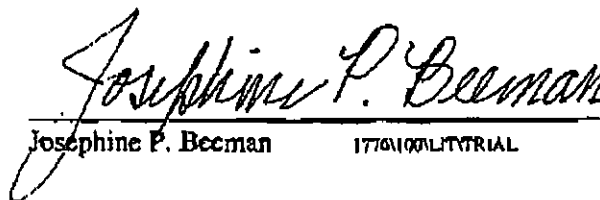

Josephine P. Beeman 1776100/LIT/RTAL

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07222
29-07322
29-07375
29-07431
29-07450
29-07502
29-07770
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29-13558
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29-13560
29-13561
29-13562
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29-13639

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**IN THE COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

)
) Subcase Nos.: EXHIBIT A
) (City of Pocatello)
)
) **SURFACE WATER COALITION'S**
) **TRIAL BRIEF**
)
)

COMES NOW, American Falls Reservoir District #2, A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal

LODGED

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Company and Twin Falls Canal Company (collectively “Surface Water Coalition” or “Coalition”), by and through their undersigned attorneys of record, and submits this *Trial Brief* in the above-captioned subcases. For the reasons set forth below, this Court should deny the identified objections filed by Pocatello with prejudice.

INTRODUCTION

Pocatello’s objections as to the Director’s recommended “points of diversion” for water rights 29-271, 29-272, 29-273, and 29-4222 must be denied since these previously decreed surface water rights do not include Pocatello’s municipal wells as “alternate” points of diversion and there has been no accomplished transfer to a new point of diversion. Moreover, Pocatello has failed to even “claim” an accomplished transfer to add alternate points of diversion for water rights 29-271, 29-272, and 29-273. An objection does not serve as a substitute for an amended claim in the SRBA.

In addition, Pocatello’s objections as to the “purpose and place of use” for water rights 29-7118, 29-7119, 29-7431, and 29-7770 must also be denied since these previously licensed water rights identify a specific purpose of use (irrigation) along with a specific place of use (appurtenant acres). Pocatello cannot change its licensed irrigation groundwater and wastewater rights into “municipal” water rights to be used anywhere in Pocatello’s service area. Finally Pocatello cannot use an objection to the recommendation of its SRBA claims as an alternative to filing an application for transfer with the Idaho Department of Water Resources (“Department”) under I.C. section 42-222. Therefore, the Court should deny Pocatello’s point of diversion objections to water rights 29-271, 29-272, 29-273, and 29-4222, and its purpose and place of use objections to water rights 29-7118, 29-7119, 29-7431, and 29-7770.

STATEMENT OF FACTS

Surface Water Rights 29-271, 29-272, 29-273

Pocatello's Mink Creek water rights (29-271, 29-272, and 29-273) were originally decreed by the Bannock County District Court on June 5, 1926 in the *Sam B. Smith, Administrator, et. al. v. City of Pocatello, et al.* ("Smith Decree") proceedings. See SWC Ex. 1. These decreed surface water rights specified a point of diversion in the NE1/4 of the SE1/4 of Section 13, Township 8 South, Range 34 East, located as the confluence of the West and South Forks of Mink Creek. See *id.* Pocatello filed a *Notice of Claim* for each right on April 19, 1990. See SWC Exs. 2, 3, and 4. On all three claims, Pocatello's mayor claimed, under oath, that the "diverting works" consisted of a "diversion dam, headgate and pipeline to system."¹ Nowhere in any of the claims did Pocatello aver that its groundwater wells were "alternate" points of diversion for these surface water rights. See AO1, Rule 4d(1)(b).

The Director recommended Pocatello's Mink Creek water rights on July 10, 2003. The Director's recommendations listed the point of diversion as claimed by Pocatello. Pocatello has not filed any amended claims for its Mink Creek water rights. The points of diversion for water rights 29-271, 29-272, and 29-273 should be decreed as recommended by the Director.

Surface Water Right 29-4222

Pocatello first filed a statutory claim (I.C. § 42-243) with the Department for its Gibson Jack Creek water right (29-4222) on February 2, 1982. See SWC Ex. 5. Pocatello later filed a *Notice of Claim* with the SRBA Court on April 19, 1990. See SWC Ex. 6. In both of these claims Pocatello identified the point of diversion for this right to consist of a "Diversion Dam & Pipeline to Reservoir" located in the SE1/4 of the SW1/4 of Section 24, Township 7 South, Range 34 East, Bannock County. However, some thirteen years later after its original filing in

¹ The Notice of Claim for water right 42-272 also included "storage tanks" in the diverting works section.

the SRBA, Pocatello filed an *Amended Notice of Claim* listing “32 WELLS” as additional points of diversion for this right. *See* SWC Ex. 7.

The Director recommended Pocatello’s Gibson Jack Creek water right on July 10, 2003. The Director’s recommendation listed the point of diversion as originally claimed by Pocatello, and did not include any groundwater wells. The point of diversion for water right 29-4222 should be decreed as recommended by the Director. There is no evidence that water from Gibson Jack Creek has ever been diverted from the ground using a well or wells.

Ground Water Rights 29-7118, 29-7119

Pocatello’s irrigation groundwater rights 29-7118 and 29-7119 were licensed by the Department on January 9, 1975. *See* SWC Exs. 8 and 9. Both licenses contained a specified number of acres in particular quarter quarter sections. *See id.* Pocatello did not appeal or seek judicial review of the licenses that were issued by the Department.

On April 19, 1990, Pocatello filed *Notices of Claim* with the SRBA Court for these irrigation groundwater rights. *See* SWC Exs. 10 and 11. Pocatello claimed the water rights as they were licensed by the Department, for irrigation purposes for the acres identified in the licenses. *See id.* On April 25, 2003, Pocatello filed a single *Amended Notice of Claim* for the two irrigation groundwater rights, claiming a “municipal” purposes of use, “32 WELLS” for the points of diversion, and a place of use as the “service area” of the city. *See* SWC Ex. 12. Pocatello filed an amended claim for the previously licensed irrigation groundwater rights even though the water system is not connected to the rest of Pocatello’s municipal water system. *See Supplemental Director’s Report Regarding City of Pocatello’s Basin 29 State-Based Water Rights* at 7. The Director recommended water rights 29-7118 and 29-7119 as licensed (and originally claimed by Pocatello) on July 10, 2003. The purpose of use and place of use for water

rights 29-7118 and 29-7119 should be decreed as recommended by the Director. There is no evidence that Pocatello changed the nature of use or point of diversion under these rights prior to November 19, 1987 and Pocatello has not filed any transfers of these rights pursuant to section 42-222, Idaho Code.

Waste Water Right 29-7431

Pocatello's water right 29-7431 ("Wastewater Right") was originally licensed by the Department on June 11, 1987. *See* SWC Ex. 13. The Wastewater Right was licensed for "irrigation" purposes on 777 acres. *See id.* Pocatello filed a *Notice of Claim* with the SRBA Court for its Wastewater Right on April 19, 1990. *See* SWC Ex. 14. The right was claimed as it was licensed in 1987. *See id.* Pocatello then filed an *Amended Notice of Claim* on April 25, 2003. *See* SWC Ex. 15. This time, Pocatello claimed "REUSE of municipal diversions" as an additional source, "32 WELLS" as the points of diversion, "municipal" as the purpose of use, and the city's "service area" as the place of use. *See id.* Again, Pocatello made such a claim despite the fact the well is not connected to the rest of Pocatello's municipal water system. *See Supplemental Director's Report* at 7. The Director recommended the Wastewater Right as licensed (and originally claimed by Pocatello) on July 10, 2003. The purpose of use and place of use for water right #29-7431 should be decreed as recommended by the Director.

Ground Water Right 29-7770

Pocatello's water right 29-7770 was permitted by the Department on December 9, 1989. *See* SWC Ex. 16. Pocatello submitted proof of beneficial use for this irrigation water right on April 5, 1990. *See* SWC Ex. 17. Pocatello's sworn statement explains that the water right was used for "286 acres" for irrigation purposes. *See id.* Pocatello then filed a *Notice of Claim* in the SRBA on April 19, 1990. *See* SWC Ex. 18. A license for water right 29-7770 was issued on

January 2, 2003. *See* SWC Ex. 19. Thirteen years later Pocatello filed an *Amended Notice of Claim* on April 25, 2003, this time alleging “32 WELLS” for the points of diversion, “municipal” purpose of use, and the city’s “service area” for the place of use. *See* SWC Ex. 20. Pocatello’s amended claim did not reflect the water right as licensed by the Department on January 2, 2003. *See id.* The Director recommended the water right as licensed on July 10, 2003. The purpose of use and place of use for water right 29-7770 should be decreed as recommended by the Director.

ARGUMENT

Idaho law prohibits Pocatello from collaterally attacking and seeking to change the elements of its previously decreed and licensed water rights through the SRBA. In turn, Pocatello cannot use the SRBA as a way to evade the requirement to file an application for transfer with IDWR under Idaho Code § 42-222. As explained below, Pocatello cannot transform decreed surface water rights into groundwater rights (by way of an alternate point of diversion theory) and licensed irrigation groundwater and wastewater rights with specific places of use into municipal water rights to be used anywhere in Pocatello’s service area. The Court should deny Pocatello’s objections.

I. Pocatello Cannot Use the SRBA as a Forum to Collaterally Attack its Prior Water Right Decrees and Licenses.

The facts relating to Pocatello’s previously decreed surface water rights and previously licensed irrigation ground water rights are undisputed. Pocatello’s Mink Creek surface water rights were decreed for irrigation purposes by the *Smith Decree* in 1926. No wells were decreed as points of diversion for these water rights. In other words, the source for these water rights is a surface stream, not groundwater, as Pocatello’s point of diversion objections imply. Pocatello’s irrigation groundwater rights were licensed by IDWR in 1975 and 2003. Pocatello’s Wastewater irrigation right was licensed by IDWR in 1987. The wells for these irrigation

groundwater and wastewater rights are not connected to Pocatello's interconnected municipal well system, they are discrete and separate systems that are used for irrigation purposes on specific acres as permitted by the prior water right licenses. Pocatello did not judicially challenge any of its licenses that were issued by IDWR.

Pocatello, through objections to the Director's recommendations, now seeks to change the elements of its previously decreed and licensed water rights in the SRBA. Contrary to the "binding effect" of its prior decrees and licenses, Pocatello seeks to change its surface water rights by adding points of diversion (which in essence changes the source), and its groundwater and wastewater irrigation rights by changing the place of use and purpose of use. Pocatello cannot escape the binding effect of its prior decrees and licenses and change its water rights unless it files a transfer with IDWR. *See* I.C. § 42-220; *State v. Hagerman Water Right Owners*, 130 Idaho 736 (1997).

As recently reaffirmed by the SRBA Court's Presiding Judge, Idaho law prohibits Pocatello's "collateral attack" on its own water rights:

In this case, of the five surface water claims filed by the City of Pocatello, water right claims 29-00271, 29-00272, and 29-00273 have already been adjudicated with a state-law basis. . . . Although decrees issued in a prior adjudication are not conclusive as to the proof of existence of a water right, *prior decrees are binding on the parties to the decree and their privies*. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 741-42, 947 P.2d 409, 414-15 (1997). . . . Accordingly, the City is bound by those prior decrees.

Licenses are and have been consistently treated in the SRBA the same as prior decrees for purposes of binding the parties and their privies. In *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, subcases 36-02708 *et al.* (Dec. 29, 1999), the SRBA Court affirmed a special master's ruling that the SRBA was not the appropriate forum for collaterally attacking licenses previously issued through administration proceedings.

The SRBA cannot serve as a second opportunity for IDWR to recondition a licensed which it had a full opportunity to condition

when the license was originally issued. *See e.g., Matter of Hidden Springs Trout Ranch, Inc. v. Allred.* Having determined that I.C. § 42-220 binds the state to licensed rights, *those same licenses are also binding on the license holder.* If a party is aggrieved by any aspect of a license that party's remedy is to seek an administrative review and then, if necessary, judicial review of the license.

* * *

Like a prior decree, a licensed right is not conclusive as to the extent of the water right, since a license does not insulate a claimant from practices occurring after the license was issued such as abandonment or forfeiture. However, unlike a prior decree, the binding effect of a license extends beyond the parties to the administrative proceeding and their privies. The Idaho legislature also acknowledged the binding effect of prior licenses and decrees in enacting Idaho Code § 42-1427 which provides a mechanism for defining elements of water rights not described in prior decrees or licenses. Accordingly, *the City is also bound by its prior license for water right claim 29-0431.*

The bottom line is that a party cannot have its water use adjudicated or administratively determined in one proceeding and then re-adjudicate the right under a more favorable legal theory in a subsequent proceeding.

Memorandum Decision and Order on Challenge and Order Disallowing Water Right Based on Federal Law at 12-13, subcase no. 29-11609 (October 6, 2006) (emphasis added).

Just as Pocatello cannot use the SRBA to transform its state decreed and licensed water rights into "federal reserved" water rights, the same goes for Pocatello's efforts to: 1) try and convert its surface water rights into groundwater rights; and 2) try and convert its irrigation groundwater and wastewater rights into "municipal" water rights than can be diverted from any well in Pocatello's system and used anywhere in its service area. If Pocatello seeks to change the elements of its water rights the proper forum is IDWR and the proper method is an application for transfer pursuant to Idaho Code § 42-222.

Accordingly, the following objections to Pocatello's prior decreed and licensed water rights should be denied:

29-271, 29-272, 29-273, 29-4222

5. Point(s) of Diversion

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Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights.

7. Purpose of Use

Should be: See "Reasons supporting objections" below.

9. Place of Use

Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right."

29-7118, 29-7119, 29-7431, 29-7770

7. Purpose(s) of Use

Should be: municipal, see also "Reasons supporting objections" below.

9. Place of Use

Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, . . ."

Pocatello is bound by its prior representations to the Bannock County District Court in the *Smith Decree* proceedings and to IDWR in the licensing proceedings. Pocatello sought and received decreed and licensed irrigation rights with specific points of diversion and places of use. Idaho law prohibits Pocatello from expanding the scope of those irrigation water rights by collaterally attacking its prior decrees and licenses in the SRBA. Moreover, it would be unprecedented for this Court to allow a claimant to change its previously decreed surface water source (i.e. Mink Creek) to groundwater (through an alternate point of diversion objection) and previously licensed "irrigation" water rights to municipal uses (through a purpose and place of use objection), when no such change has occurred. Pocatello cannot demonstrate that it changed the point of diversion for its surface water rights or the purpose and place of use for its irrigation groundwater and wastewater rights. The Court should deny the above-referenced objections filed by Pocatello

II. Pocatello Has Not Provided Any Evidence to Support a Claim of “Alternate Points of Diversion” for its Surface Water Rights

Pocatello, through its objections, claims that various wells should be identified as “alternate points of diversion” for water rights 29-271, 29-272, 29-273, and 29-4222. In Pocatello’s *Response Brief* on summary judgment, it alleges that “all four water rights have priorities before 1969, and under the common law are therefore not required to file a transfer to any wells which began operating as APOD’s before 1969.” *Pocatello Response* at 10. Despite this statement, Pocatello has offered no evidence or legal authority to support this statement, including the significance of any “common law” or so-called “pre-1969 transfer rule”. Although Idaho’s adjudication statutes allow an accomplished transfer of a water right, under certain conditions that occur prior to 1987, Pocatello did not claim an accomplished change in the points of diversion for its surface water rights 29-271, 29-272, and 29-273. Instead, Pocatello filed objections to the Director’s recommendations in an effort to add the wells as points of diversion. As explained in Section III below, this method of amending a claim is prohibited in the SRBA as a matter of law.

Regardless, Pocatello has failed to provide any evidence that its surface water rights have been previously diverted through groundwater wells. Although Pocatello claims to have fully diverted its surface water rights through wells in the spring of 1985 and 1986, it is undisputed that Pocatello was diverting water under existing ground water rights during that period (152.4 cfs of ground water rights), which was more than ample to supply the four to five cfs of deferred surface water diversion. See SWC Ex. 21 *Brockway Report* at 5. The fact that Pocatello’s ground water rights may have been furnishing the entire city demand during the April-June 1985 and March-May 1986 period does not affirm that the ground water pumped was, in fact, Mink Creek or Gibson Jack Creek water. See *id.* Moreover, Pocatello has not proven that water

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available to its surface water rights during that time was not diverted by another downstream surface water user on the Portneuf river system.

Finally, there is no hydrologic evidence to support Pocatello's claim that its wells should be considered alternate points of diversion for the surface water rights from Mink Creek and Gibson Jack Creek. *See* SWC Ex. 21, *Brockway Report* at 3. If, in fact, ground water is pumped in lieu of a surface water diversion six miles away from the ground water extraction with the same early priority as the surface right, there will be significant differences in the timing and magnitude of both the Portneuf River flow and ground water underflow from the basin. *See id.* at 3-4. Pocatello cannot demonstrate that there is an "immediate and direct connection between the surface sources and the well(s)", and certainly that there is "at least a 50 percent depletion in the original source from depletion at the proposed point of diversion in one day" as required by IDWR's Transfer Processing Memo No. 24 (exhibit to IDWR *Supplemental Director's Report*). *See id.* at 4.

III. Pocatello Cannot Change its Prior Decreed Mink Creek Water Rights Through Objections in the SRBA.

In addition to the binding effect of prior decrees and licenses, Pocatello is similarly bound by its claims to the SRBA Court. Pocatello's claims for water rights 29-271, 29-272, and 29-273 were all filed on April 19, 1990. *See* SWC Exs. 2, 3, and 4. On all three claims, Pocatello's mayor claimed, under oath, that the "diverting works" consisted of a "diversion dam, headgate and pipeline to system." *See id.* Nowhere in any of the claims did Pocatello aver that its groundwater wells were "alternate" points of diversion for these surface water rights. Pocatello filed amended objections to all three claims in November 2003, alleging that the point of diversion included "all ground water points of diversion for the City of Pocatello's municipal water rights."

The SRBA Rules of Procedure (AO1) prohibit Pocatello's efforts to amend its claims by way of an objection. See Rule 4(d)(1)(b) ("A claimant **may not** amend a claim by filing an objection or a response") (emphasis in original). Since Pocatello did not claim the wells as a point of diversion when it filed claims for 29-271, 29-272, and 29-273 in 1990, and since Pocatello has failed to file any amended claims alleging a different point of diversion than what was originally claimed (i.e. "diversion dam, headgate, and pipeline to system"), the point of diversion objections should be denied. Pocatello has claimed that its four surface water rights "are treated as a group" and since it filed an amended claim for water right 29-4222 that somehow carries over as an amendment of its other surface water right claims. The argument is unavailing. Each water right was claimed separately and constitutes a separate subcase in the SRBA. The fact is undisputed that Pocatello did not amend its claims for water rights 29-271, 29-272, and 29-273. Pocatello cannot amend the elements of its claims through an objection.

Similarly, even if Pocatello is claiming "alternate points of diversion" under an accomplished transfer theory under I.C. § 42-1425, Pocatello has not complied with this statute either. Section 42-1425 plainly provides that "any change of place of use, point of diversion, nature or purpose of use or period of use of a water right . . . *may be claimed* in a general adjudication . . ." Pocatello has not claimed an accomplished transfer of the points of diversion of its surface water rights. Although the theory is impliedly advanced in the *Spronk Water Engineers, Inc. Expert Report* (at 16, "The surface water rights were fully diverted at the City's wells during April – June 1985 and during March – May 1986. By meeting its demand through the interconnected wells in lieu of diverting surface water, Pocatello diverted its surface water rights through its interconnected well system as alternate points of diversion prior to November 19, 1987."), that theory does not change the fact that Pocatello has *never formally claimed* such

a change in the points of diversion for its surface water rights in the adjudication. Since the original claims have not been amended, other parties in the SRBA have not received notice of what now appears to be an “accomplished transfer” claim. Pocatello cannot satisfy the statute through an objection and an expert report. The objections should be denied.

IV. The Director’s Recommendation on Pocatello’s 22 Interconnected Wells is Reasonable.

SWC Ex. 21; *From Brockway Report* at 4:

“The City claimed all of its wells as alternate points of diversion for all of its water rights which, if approved, would allow diversion of any of its water rights, senior or junior, from any well. If approved, priority administration would require determination of the instantaneous discharge from each well at all times to determine whether diversion rates were within priority. If the City was diverting in excess of the rate allowed under the cumulative priority of all rights, then either the Department or the City would have to decide which well or wells would be shut off or curtailed. This would be extremely difficult to regulate or administer. The Department’s decision to require a condition on each water right showing the date of first appropriation and the well number and location is justified. Any decision by the City to pump at significantly greater rates than historical practice from later priority wells could result in injury to local ground water users, especially those with earlier priority wells.

A change in spatial distribution of ground water pumping by the City within the authorized service area or place of use would likely not result in significant changes in short or long term underflow from the aquifer to the Eastern Snake Plain Aquifer. Thus there would likely not be negative impacts to the ESPA resulting just from the changes in diversion points.”

V. Pocatello’s Proposed Remark for the Place of Use on its Water Rights is Unnecessary and Should be Denied.

Pocatello offered the following remark in its place of use objections to all water rights:

“Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, *including all lands necessary to complete the beneficial use of the municipal water right.*”

See generally Pocatello Objections (emphasis added).

3714

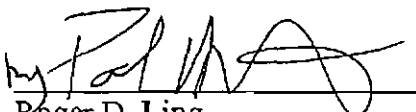
There is no basis in fact or law for the highlighted portion of the remark Pocatello seeks. The place of use and beneficial use of Pocatello's water rights are defined elements. The remark Pocatello seeks may be interpreted to modify the elements and unlawfully expand the scope of Pocatello's water rights. The remark was not included in the Director's recommendations and Pocatello has not provided any basis in fact or law for its inclusion. Therefore, the objections should be denied.

CONCLUSION

Pocatello's efforts to change its water rights through the SRBA are prohibited by Idaho law. For the foregoing reasons, this Court should deny Pocatello's point of diversion objections to its prior decreed water rights, claims 29-271, 29-272, 29-273, and 29-4222 and the purpose of use and place of use objections to its prior licensed irrigation groundwater and wastewater rights, claims 29-7118, 29-7119, 29-7431, and 29-7770.

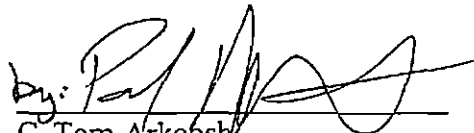
Dated this 14th day of February, 2007.

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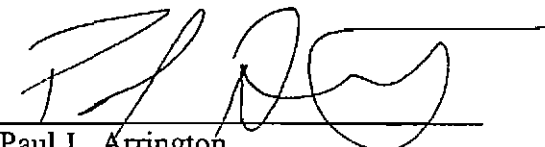
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TWIN FALLS CO., IDAHO

IN THE COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) Subcase Nos.: EXHIBIT A
) (City of Pocatello)
)
) SURFACE WATER COALITION'S
Case No. 39576) WITNESS & EXHIBIT LIST
)
)

The following constitutes the witness and exhibit lists of American Falls Reservoir
District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District,

3718

Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company
(collectively "Surface Water Coalition" or "Coalition"):

WITNESSES:

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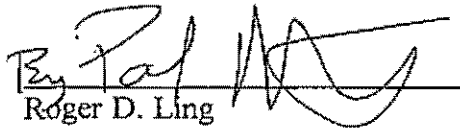
EXHIBITS:

Exhibit No.	Description	Offered	Admitted
1	1962 Smith Decree		
2	Notice of Claim for Water Right 29-00271		
3	Notice of Claim for Water Right 29-00272		
4	Notice of Claim for Water Right 29-00273		
5	1982 Statutory Claim for Water Right 29-4222		
6	1990 Notice of Claim for Water Right 29-4222		
7	2003 Amended Notice of Claim for Water Right 29-4222		
8	License for Water Right 29-7118		
9	1990 Notice of Claim for Water Right 29-7118		
10	License for Water Right 29-7119		
11	1990 Notice of Claim for Water Right 29-7119		
12	2003 Amended Claim for Water Rights 29-7118 & 29-7119		
13	License for Water Right 29-7431		
14	1990 Notice of Claim for Water Right 29-7431		
15	2003 Amended Claim for Water Right 29-7431		

16	Permit for Water Right 29-7770		
17	Proof of Beneficial Use for Water Right 29-7770		
18	License for Water Right 29-7770		
19	1990 Notice of Claim for Water Right 29-7770		
20	2003 Amended Claim for Water Right 29-7770		
21	Brockway Rebuttal Expert Report		


Dated this 14th day of February, 2007.

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Roger D. Ling

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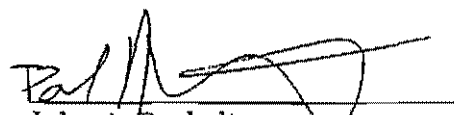
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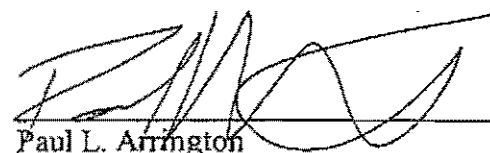
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Attorneys for United States of America


Paul L. Arrington

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 TWIN FALLS CO., IDAHO
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase Nos. 29-00271, <i>et al.</i> (see attached Exhibit A)
)	
)	
	)	STATE OF IDAHO'S TRIAL BRIEF
Case No. 39576)	
)	
)	
)	

COMES NOW, the State of Idaho, by and through the undersigned counsel, and submits this Trial Brief to the SRBA District Court. This memorandum outlines the issues for trial and discusses the legal standards applicable to the Court's determination of the disputed issues of fact.

The State of Idaho intends to rely upon the investigation performed by the Idaho Department of Water Resources, hereinafter the "IDWR," of the claims of the City of Pocatello, hereinafter the "City."

I. STATEMENT OF THE CASE

i. The Nature of the Proceedings

This controversy relates to the determination of the City's water rights.

ii. Course of the Proceedings

The City filed thirty-eight claims to water rights acquired under state law. The IDWR recommended all thirty-eight claims to water rights. However, the City disagreed with the conditions imposed by the IDWR and filed objections to all of IDWR's Recommendations.

The State of Idaho filed a timely response to each of these objections.

The Surface Water Coalition filed a Joint Motion to Participate in March 2006. The Court granted this motion on April 25, 2006.

The IDWR filed a Supplemental Director's Report Regarding City of Pocatello's Basin 29 State-Based Water Rights on April 13, 2006, hereinafter referred to as "Supplemental Director's Report," which included a variety of maps and exhibits.

II. ISSUES PRESENTED FOR TRIAL

Because of the number of water rights involved, the relationship between the various water rights, the issues raised by the objections, the explanation provided by the IDWR in its Supplemental Director's Report, the elements at issue for each water right are confusing. The State of Idaho does not know whether the City intends to proceed with each issue stated in its objections or whether the City has acquiesced in any of the issues first raised in its objections. The following four groups of issues are believed to be before the District Court:

A. **Municipal purpose:** The IDWR recommended thirty-one water rights with a municipal purpose of use and the following seven water rights with an irrigation purpose of use: 29-2354, 29-7118, 29-7119, 29-7222, 29-7431, 29-7502, and 29-7770. The City's objections requested that all of its water rights have a municipal purpose of use. The Supplemental Director's

Report described this objection as applying to the following water rights: 29-7118, 29-7119, 29-7431, and 29-7770. The City acquired water right no. 29-7222 and the appurtenant land in 1992 for a public park in memory of the donor's deceased husband, Owen Ward. Supplemental Director's Report, at 6. The City acquired water right nos. 29-2354 and 29-7502 as part of the Restlawn Cemetery after 1987. The legal issues about application of Idaho Code § 42-1425 to these three water right differ from the other four water rights listed above.

B. Alternative Points of Diversion for Certain Ground Water rights. The IDWR recommended the following eighteen water rights as being interconnected and included a special provision to prevent injury. 29-2401, 29-2499, 29-4221, 29-4223, 29-4224, 29-4225, 29-4226, 29-7106, 29-7322, 29-11339, 29-11348, 29-13558, 29-13559, 29-13560, 29-13561, 29-13562, 29-13637, and 29-13639. The City objects to the condition and seeks its deletion.

The IDWR recommended the following three water rights as being interconnected and included a special provision to prevent injury: 29-7450, 29-11344, and 29-13638. The City objects to the condition and seeks its deletion.

C. Alternative Points of Diversion for Four Surface Water rights. The IDWR recommended the four surface water rights with only the original point of diversion from the surface source. The City objected and would like the surface water rights to be diverted from its existing points of diversion from ground water.

D. Separate Administration of Water Rights: The IDWR recommended that all water rights within Basin 29 be administered as connected sources of water, except for three water rights not relevant to these proceedings in the Papoose Creek drainage. The City objected and requested that all of its water rights be administered separately. The difficulty with this issue is that the predicate facts that need to be established for such a conclusion are inconsistent with the City's

objections related to alternative points of diversion for its water rights. For this reason, it is difficult for a party other than the claimant to determine what matters will be disputed at trial.

III. CLAIMANTS BEAR BOTH THE BURDEN OF PRODUCTION AND THE BURDEN OF PROOF ON EACH DISPUTED ELEMENT OF EACH WATER RIGHT.

Idaho Code § 42-1411(5) "makes it clear that the claimant bears both the burden of production as well as the burden of proof as to each element of a claimed water right." *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 742, 947 P.2d 409, 415 (1997). Pursuant to Idaho Code § 42-1411(4), the Director's Report "is prima facie evidence of the nature and extent of the water rights under state law." *Clear Springs Foods, Inc. v. Clear Lakes Trout Co.*, 136 Idaho 761, 764, 40 P.3d 119, 122 (2002). Claimants, as the objecting parties, have "the burden of going forward with evidence to establish any element of a water right which is in addition to or inconsistent with the description in a director's report." Idaho Code § 42-1411(5); *see also State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 746, 947 P.2d 409, 419 (1997) ("The director's report is presumed to be correct until such time as a water claimant produces sufficient evidence to rebut that presumption."). As a result, a claimant is "required to present substantial evidence . . . in order to overcome the presumption created by the director's report." *Clear Springs Foods, Inc.*, 136 Idaho at 764, 40 P.3d at 122; *see also Bongiovi v. Jamison*, 110 Idaho 734, 738, 718 P.2d 1172, 1176 (1986). Substantial evidence is defined "as such relevant evidence as a reasonable mind might accept to support a conclusion; it is more than a scintilla, but less than a preponderance." *Evans v. Hara's, Inc.*, 123 Idaho 473, 478, 849 P.2d 934, 939 (1993).

CONCLUSION

The trial of these thirty-eight water rights acquired under state law will present a major logistical challenge in sorting out the evidence as it applies to each of the disputed water rights.

Since the City has both, the burden of producing evidence, and the ultimate burden of persuasion, any failure of proof dictates that the Court decree the specific water right in accordance with the Director's Recommendations.

RESPECTFULLY SUBMITTED this 14th day of February 2007.

STATE OF IDAHO

LAWRENCE G. WASDEN
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Deputy Attorney General
Chief, Natural Resources Division

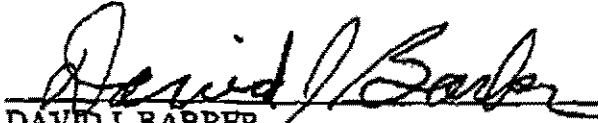

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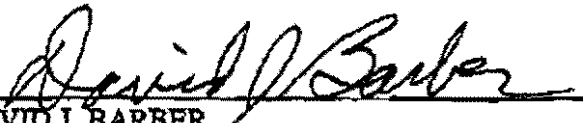
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)	
Case No. 39576)	
)	
)	
)	

The State of Idaho, through counsel, submits the following List of Witnesses that it may call during its case in chief.

Carter Fritschle, Water Agent with the Idaho Department of Water Resources.

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////

STATE OF IDAHO'S LIST OF WITNESSES

Page 1

3731

DATED this 14th day of February 2007.

State of Idaho

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Attorney General

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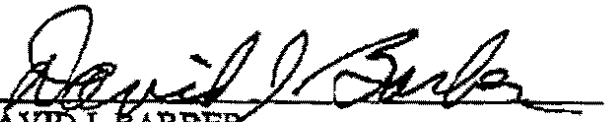

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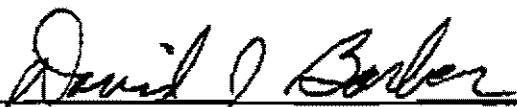
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Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
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Not Applicable



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DISTRICT COURT - SRBA
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Attorneys for City of Pocatello

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
)	
	)	CITY OF POCA TELLO'S TRIAL BRIEF
Case No. 39576)	
)	

I.

**STATUS OF OBJECTIONS AT THE TIME OF TRIAL:
ISSUES NOT PRESENTED FOR TRIAL**

The City of Pocatello (Pocatello) and the United States Bureau of Land Management (BLM) were the only parties to file objections to the City of Pocatello's 38 state-law water right claims recommended at the SRBA court.

The BLM objections were dismissed with prejudice. The United States of America, on behalf of BLM, was at one time an objector in 30 of these 38 subcases, but those objections were dismissed with prejudice in November 2004.¹

¹ On November 13, 2003, the United States of America acting through the Department of Interior, Bureau of Land Management, Idaho State Office, filed objections to certain elements in the Director's Report for 30 of the City of Pocatello's 38 state-law based SRBA claims (BLM Objections). The City of Pocatello and the United States of America filed on November 18, 2004 a Joint Motion to Dismiss Objections, seeking to dismiss with prejudice the BLM Objections. On November 22, 2004, Special Master Bilyeu issued an order granting the Joint Motion to Dismiss Objections. The 30 subcases were: 29-00271, 29-00272, 29-00273, 29-02274, 29-02338, 29-02382, 29-02401, 29-02499, 29-04221, 29-04222, 29-04223, 29-04224, 29-04225, 29-04226, 29-07106, 29-07322, 29-07375, 29-07450, 29-07782, 29-11339, 29-11344, 29-11348, 29-13558, 29-13559, 29-13560, 29-13561, 29-13562, 29-13637, 29-13638 and 29-13639.

The City of Pocatello's Swan Falls objections are part of a designated basin-wide issue.
See Basin-Wide Issue 91-13 (Previously Consolidated Subcase 92-00037) *Order Designating Basin-Wide Issue Re: To What Extent, if any, Should the Swan Falls Agreement be Addressed in the SRBA or Memorialized in a Decree?*, dated August 23, 2004.

The City of Pocatello's objections seeking remarks and/or general provisions related to storage, and municipal place of use have been settled. This is based on IDWR's "24-Hour Fill" rule. The City also accepted the following language in the Director's Report: "Place of Use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law."

Stipulations among the parties have eliminated objections to elements of individual water rights.

29-4221: Stipulation to resolve objection to priority date; agreed to change to 8/02/1943.

29-7450: Stipulation to resolve objection to point of diversion; agreed to T06S R33E S10 NESE within Power County and T06S R33E S15 SWNE within Power County.

29-11344: Stipulation to resolve objection to point of diversion; agreed to T06S R33E S10 NESE within Power County.

29-13636: Stipulation to resolve objection to place of use; agreed to Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

29-13638: Stipulation to resolve objection to point of diversion; agreed to T06S R33E S10 NESE within Power County and T06S R33E S15 SWNE within Power County.

The City's Separate streams / separate administration general objections were withdrawn.
See *Joint Motion to Accept Stipulation and Agreement Between the City of Pocatello and the United States*, Subcase Nos. 29-00271, et al. dated May 31, 2006; *Stipulation and Agreement with the United States of America in Pocatello's SRBA Subcases 29-271 et seq.*, dated April 2006; and July 14, 2006 *Order Dismissing Portions of Objections and Responses with Prejudice*, Subcase Nos. 29-00271, et al.

Objections withdrawn as to specific issues as to individual water rights:

29-4223 (the objection as to quantity is withdrawn);

29-4226 (the objection as to quantity is withdrawn);

29-7782 (Swan Falls is only remaining issue)

29-7222 (Swan Falls is only remaining issue);

29-2354 (Swan Falls is only remaining issue);
29-7502 (Swan Falls is only remaining issue); and
29-7431 (Swan Falls is only remaining issue).

II. ISSUES PRESENTED FOR TRIAL

At the trial set to begin on Monday, February 26, 2007, the City of Pocatello will present evidence and legal argument on several substantive questions concerning the defined elements, and interrelated operation of, the City's municipal water system, along with other subsidiary matters related to these primary substantive questions that also arise from the objections that have made in the above-referenced subcases.

As to the primary questions that the city of Pocatello will raise at trial, the city will argue that the water rights represented by its system of twenty-two physically connected ground water wells should be administered according to priority under the appropriation doctrine as a single integrated system, without the "remarks" proposed by the Department for certain individual wells. The remarks identify a particular priority and quantity of use to be associated with a particular well. The City will also argue that its claimed water rights should be consistently and uniformly decreed for the broadly defined "municipal purposes," as has been defined at common law and memorialized by statute. Within the context of the comprehensive municipal purpose of its water right claims, the City will also argue that its water rights should be decreed upon the overriding premise that the City operates a single integrated water rights system, including both surface and groundwater sources, for delivery of culinary water, and that the City's water rights served by that system should be both decreed and administered based upon that overriding premise.

As further argued below, the City's claims that are at issue in the pending trial are in substantial part supported by the "accomplished transfer" statute, I.C. § 42-1425, in relation to the City's interconnected water sources; in respect to the integrated surface and ground water rights system for the City; and as to the alternate points of diversion for the waters rights that can be withdrawn by the use of any of Pocatello's 22 interconnected wells.

Cutting across all the questions to be addressed at trial is the persistent issue of identifying and adjudicating only those matters that are necessary for the definition and administration of a water right that are within the primary jurisdiction of the court, while deferring to a later day those matters that are more properly left to the administration of a decreed water right that are within the primary jurisdiction of the IDWR.

III. ACCOMPLISHED TRANSFERS UNDER I.C. § 42-1425

The City of Pocatello objects to the following remark being included on each of the water right claims diverted by the 22 interconnected wells for the purpose of defining the water right:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, water was first appropriated at or used from:
Pocatello Well No. ____, located in [legal description] on [date] in the amount of ____ cfs.

The Supplemental Director's Report (April 13, 2006) included the following rationale for including the above-stated remark:

In its claims, Pocatello claimed all of its points of diversion on all of its rights under the theory of an accomplished transfer. *See*, Idaho Code § 42-1425. To support its claims, Pocatello provided a map showing the location of each point of diversion and the distribution system as it existed on November 19, 1987. By listing all of its points of diversion for all of its water rights, the City would be allowed to withdraw water under its most senior priority water right from any well location. The Department, in order to recommend multiple, alternate points of diversion on the City's interconnected water rights under an accomplished transfer theory, **included a condition to prevent injury that could result from this practice**. Without the condition, the Department would not have recommended the multiple, alternate points of diversion because injury to other water rights was likely.

Supplemental Report at pp. 12-13 (emphasis added).

The city opposes the imposition of the remark as not required for the definition of a water right; as not supported by the accomplished transfer statute, I.C. § 42-1425; and that the Department

does not have legal authority to impose the remark for the purposes it has stated in the Amended Director's Report.

This dispute puts directly at issue the question of whether the Department can place the proposed remark on these water rights, as a matter of law, and not violate the provisions of the accomplished transfer statute, I.C. § 42-1425, which in relevant part, provides as follows:

(2) Any change of place of use, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19, 1987, the date of commencement of the Snake River basin adjudication, may be claimed in a general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right. Except for the consent requirement of section 42-108, Idaho Code, all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance with the following procedures:

(a) If an objection is filed to a claim for accomplished change of place of use, point of diversion, nature or purpose of use or period of use, the district court shall remand the water right to the director for further hearing to determine whether the change injured a water right existing on the date of the change or constituted an enlargement of the original right. After a hearing, the director shall submit a supplemental report to the district court setting forth his findings and conclusions. If the claimant or any person who filed an objection to the accomplished transfer is aggrieved by the director's determination, they may seek review before the district court. If the change is disallowed, the claimant shall be entitled to resume use of the original water right, provided such resumption of use will not cause injury or can be mitigated to prevent injury to existing water rights. The unapproved change shall not be deemed a forfeiture or abandonment of the original water right.

(Emphasis added).

Until it recommended Pocatello's claims in the SRBA, the Department had *never before* imposed conditions on accomplished transfers claimed by other cities in the SRBA. Prior to the Director's Report for Basin 29, IDWR routinely recommended to the SRBA Court entry of partial decrees for claimants for alternate points of diversion for multiple water rights without the condition that is recommended for Pocatello's wells. See City of Roberts, 35-04241, 35-07886; City of Aberdeen, 35-04070, 35-04071, 35-07808; Lamb Weston Inc., 35-02603, 35-04127, 35-12670; City of Hazeiton, 36-02282, 36-04250, 36-07858; City of Jerome, 36-02518, 36-04195, 36-04196, 36-08237, 36-15361; City of Paul, 36-04083, 36-07206, 36-07899; City of Rupert, 36-04075, 36-07115, POCATELLO'S TRIAL BRIEF – PAGE 5

36-07656, 36-07862, 36-07863, 36-15488, 36-15489; City of Twin Falls, 36-02603A, 36-02646; City of Burley, 36-02648A, 36-02729, 36-08154; Union Pacific Railroad Co, 36-04203, 36-04204.

The Department has clearly predicated the placement of this remark upon the water rights associated with these wells upon the hypothetical occurrence of some "future" injury arising from the exercise of Pocatello's water rights.

The City will argue that the proposed remark is being placed for an improper purpose in further defining an accomplished transfer water right by a means not recognized by the statute; and that under that statute the only injury that is relevant is whether any injury arose as a result of the accomplished transfer as of November 19, 1987. Further, that inquiry is only appropriate after an allegation of injury to an identified water right.

The city of Pocatello will establish at trial the absence of facts demonstrating injury to any identified water right – as of November 19, 1987 – or the present – as a result of Pocatello's use of the alternate points of diversion at these wells under these water rights prior to that date. The city of Pocatello will also argue that the placement of these remarks within these water rights exceeds the legal authority granted by statute for the definition of a water right.

The SRBA district court has recognized, specifically in respect to conjunctive management issues, that its decrees do not make all factual determinations necessary for conjunctive administration of surface and ground water rights.

IDWR is charged with the duty of administering water rights in accordance with the prior appropriation doctrine and determine specific interrelationships based on information not necessarily contained in the partial decree. . . . The partial decree need not contain information regarding how each particular water right on the source physically affects one another for purposes of curtailing junior rights in the event of a delivery call. Rather, IDWR makes this determination based on its knowledge and data regarding how the water rights are physically interrelated.

Order on Basin-Wide Issue 5 at 19.

Simply stated, water right adjudications do not decide all the factual questions relevant to administration, but rather leave many such issues to the administrative process. *See e.g. Tudor v. Jaca*, 164 P.2d 680, 686 (Or.1946) ("The court, having established the priorities, should not attempt to anticipate exigencies which may arise in administration of the decree, but should leave such matters to the water master, whose duty it is to preserve the priorities and the quantities consistently with the highest duty of water, as applied to all concerned") (internal quotation marks and citation omitted).

This is particularly true in determining to what extent the diversion and use of water from one source impacts the water flows in that source and other sources." *A&B Irr. Dist.*, 131 Idaho at 422, 958 P.2d at 579. These matters are left to IDWR because the SRBA cannot make all these technical determinations, as the SRBA district court has observed:

the scope of these proceedings should not include a factual determination of the specific interrelationships or the degree of connectivity between specific water rights (i.e. which particular junior water rights will be curtailed in the event a delivery call by a senior). Factually, the Court could not make findings as to exact relationships. As indicated by IDWR, the technology and the data do not presently exist for making such determinations. Even if the technology and data did exist the task of making such factual determinations would be monumental in terms of scope. Lastly, the specific interrelationships are dynamic as opposed to static. Therefore, any factual determinations made by the Court would be subject to change depending on climatic conditions and future geological activity.

Order on Basin-Wide Issue 5 at 19.

The Director is "the expert on the spot [with] the primary responsibility for a proper distribution of the waters of the state," not a special master or referee who resolves delivery calls under judicial procedures developed for private water rights litigation. *Keller v. Magic Water Co.*, 92 Idaho 276, 283, 441 P.2d 725, 732 (1968) (internal quotation marks and citations omitted). The Director is at times called upon to exercise judgment and decide questions but, when his or her judgment is exercised as a means of administering the law, those acts are administrative, rather than judicial. *Speer v. Stephenson*, 16 Idaho 707, 718, 102 P. 365, 369 (1909); *see also Arkoosh v. Big Wood Canal Co.*, 48 Idaho 383, 395-96, 283 P. 522, 525-26 (1920) (holding that the commissioner of reclamation determines when an appropriator is able to beneficially use water and may either deliver or refuse to deliver water, even though he decree made the appropriator the judge of when water could be so used); *A & B Irr. Dist.*, 131 Idaho at 415, 958 P.2d at 572 (1997) ("The Director has the administrative duty and authority . . . to prevent wasteful use of water by irrigators).

The proposed remark should be stricken from the water rights associated with these wells.

IV. MUNICIPAL WATER RIGHTS

The city of Pocatello is a municipality organized under the laws of the state of Idaho. Its surface and ground water rights are derived from interconnected sources. The city uses water under these water rights for all purposes allowed by law for a "municipal" water right.

Municipal water rights are broadly defined under Idaho common law as encompassing a broad spectrum of valid uses of water by a municipality. The city of Pocatello has submitted its

POCATELLO'S TRIAL BRIEF— PAGE 7

water right claims within the broad category of "municipal" water rights available for year-round use. All of the water rights at issue for trial fall within the uses, and related purposes, included within the common law category of municipal use, as at least partially codified in I.C. § 42-202B(6). All of the uses, as described, fall within the broad category of "municipal use." Idaho common law and statutes have provided for this broad and all-encompassing category for the benefit of the many different uses of water that are made by a typical Idaho municipality. Just because a municipality specifically uses water to accomplish waste disposal does not provide a legal basis for the elimination of those water uses from the classification of municipal use.

The reason for establishing the "municipal use" category was to provide municipalities with the flexibility over time to shift and adjust water use and application within the various categories that are included in "municipal use." The proposed exclusion of certain of the city's water rights from the municipal use category is not supported by law, and does not advance any public policy purpose in the efficient development use of Idaho's water. The decision to omit water rights 29-7118, 29-7119, and 29-7770 from the "municipal use" category is without support in Idaho law. The error of law in the licensing of these water rights as "irrigation use" is not binding. Pocatello's water rights 29-7118, 29-7119, and 29-7770 should be decreed for "municipal use."

V. WATER RIGHTS FROM INTERCONNECTED SOURCES

The Department, in recommending Pocatello's water rights have has asserted that both the City and the State are bound by provisions of a 1999 transfer accomplished under the authority of I.C. § 42-222, which failed to recognize the interconnection of Pocatello's points of diversion and contained numerous errors of fact. The Department, by its administrative actions, cannot perpetuate mistakes of law or fact. *See, Kelso & Irwin, P.A. v. State Insurance Fund*, 134 Idaho 130, 138, 997 P.2d 591, 599 (2000).

Pocatello's diversion of its surface water rights and ground water rights from the City's interconnected culinary system is not a source of injury to other water users. Therefore, the City's surface water rights and ground water rights for its interconnected culinary system should be decreed with the 22 wells as alternates point of diversion.

VI. MISCELLANEOUS DISCRETE FACTUAL ISSUES

The rate of diversion for 29-4222, the priority date for 29-13558, and the priority date for 29-13639 will be addressed individually at trial.

VII. CONCLUSION

The Court should determine that:

1. Water rights 29-7118, 29-7119, and 29-7770 be decreed for "municipal purposes."
2. The remark imposed by IDWR under the accomplished transfer statute, I.C. § 42-1425 should be removed from every affected water right.
3. The City's interconnected wells are alternate points of diversion for the City's four surface water rights.
4. The rate of diversion for 29-4222, the priority date for 29-13558, and the priority date for 29-13639 should be decreed as claimed.

DATED this 15TH day of February 2007.

BEEMAN & ASSOCIATES, P.C.

Attorneys for the City of Pocatello

By

Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15TH day of February 2007, I caused a true copy of the foregoing CITY OF POCA TELLO'S TRIAL BRIEF to be served on the following by U.S. First Class Mail unless indicated as faxed or hand delivered:

UNITED STATES OF AMERICA REPRESENTED BY: US DEPARTMENT OF JUSTICE ENVIRONMENT & NAT'L RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	C. TOM ARKOOSH ARKOOSH LAW OFFICES, CHTD. PO BOX 32 GOODING, IDAHO 83330
NATURAL RESOURCES DIV CHIEF STATE OF IDAHO ATTORNEY GENERAL'S OFFICE PO BOX 44449 BOISE, ID 83711-4449	W. KENT FLETCHER FLETCHER LAW OFFICE PO BOX 248 BURLEY, IDAHO 83318
DIRECTOR OF IDWR PO BOX 83720 BOISE, ID 83720-0098	ROGER D. LING LING ROBINSON & WALKER PO BOX 396 RUPERT, IDAHO 83350
	JOHN A. ROSHOLT TRAVIS L. THOMPSON BARKER ROSHOLT & SIMPSON 113 MAIN AVE. WEST, SUITE 303 TWIN FALLS, IDAHO 83301-6167

Josephine P. Beeman
Josephine P. Beeman 7640

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07222
29-07322
29-07375
29-07431
29-07450
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29-13636
29-13637
29-13638
29-13639

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CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase Nos. 29-00271, <i>et al.</i> (see Attached Exhibit A)
)	
	)	STATE OF IDAHO'S MOTION TO TAKE JUDICIAL
	)	NOTICE
Case No. 39576)	
)	
)	
)	

COMES NOW, the State of Idaho, by and through the undersigned deputy attorney general, and moves the Snake River Basin Adjudication District Court, hereinafter the "Court," for an order taking judicial notice of the partial decrees entered in the Snake River Basin Adjudication, hereinafter the "SRBA," where the point of diversion is from Gibson Jack Creek or Mink Creek and any tributary thereof. The decrees are listed in Exhibit B, and Exhibit C contains a copy of each such decree. The grounds for this motion are as follows:

ORIGINAL

1. Rule 201 of the Idaho Rules of Evidence states, in part, as follows:

(a) **Scope of Rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially notice fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

...

(e) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

2. The motion is timely because Rule 201 allows judicial notice to be taken at any stage of the proceeding. This motion provides notice substantially before the pre-trial conference set on February 21, 2007 and before the trial that commences on February 26, 2007.

3. One of the issues before the District Court in the forthcoming trial relates to transferring the points of diversion of four surface water rights from Mink Creek and Gibson Jack Creek to wells that divert from the Lower Portneuf River Valley Aquifer. Any analysis of injury from such changes in points of diversions will need to review the existing water rights on Mink Creek and Gibson Jack Creek. The partial decrees entered for these two water sources will provide some, but perhaps not all, of the information needed to assess the potential for injury by this requested transfer. The taking of judicial notice of the partial decrees for these water sources by the District Court will provide some of this required information.

4. Exhibit C contains a copy of the partial decrees described in Exhibit B. I.R.E. § 201(b) requires that the adjudicative fact be "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Here, since the State of Idaho is requesting the Court to take judicial notice of its own adjudicative records, this requirement is met.

PRAYER FOR RELIEF

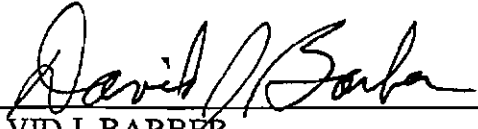
1. That the Court enter an order that takes judicial notice of the partial decrees listed on Exhibit B and contained in Exhibit C.
2. That the Court set this matter for hearing at the pretrial conference scheduled on February 21, 2007 at 1:30 p.m., or as soon thereafter as counsel may be heard.
3. That all parties be given an opportunity for oral argument.
4. That the Court grants such other or further relief that it deems appropriate and proper.

DATED this 15th day of February 2007.

State of Idaho

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

3748

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EXHIBIT A

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
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29-07119
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29-13638
29-13639

3750

3751

EXHIBIT B

EXHIBIT B

LIST OF PARTIAL DECREES

1. Partial Decree entered for water right no. 29-274C.
2. Partial Decree entered for water right no. 29-274D.
3. Partial Decree entered for water right no. 29-274E.
4. Partial Decree entered for water right no. 29-274F.
5. Partial Decree entered for water right no. 29-274G.
6. Partial Decree entered for water right no. 29-274I.
7. Partial Decree entered for water right no. 29-274J.
8. Partial Decree entered for water right no. 29-275.
9. Partial Decree entered for water right no. 29-276B.
10. Partial Decree entered for water right no. 29-276C.
11. Partial Decree entered for water right no. 29-276D.
12. Partial Decree entered for water right no. 29-276E.
13. Partial Decree entered for water right no. 29-277A.
14. Partial Decree entered for water right no. 29-2257.
15. Partial Decree entered for water right no. 29-2323.
16. Partial Decree entered for water right no. 29-4235.
17. Partial Decree entered for water right no. 29-4273.
18. Partial Decree entered for water right no. 29-4339.
19. Partial Decree entered for water right no. 29-10608.
20. Partial Decree entered for water right no. 29-10843.
21. Partial Decree entered for water right no. 29-10923.

22. Partial Decree entered for water right no. 29-11079.
23. Partial Decree entered for water right no. 29-11300.
24. Partial Decree entered for water right no. 29-11331.
25. Partial Decree entered for water right no. 29-11345.
26. Partial Decree entered for water right no. 29-11526.
27. Partial Decree entered for water right no. 29-13434.

3734

EXHIBIT C

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I R C.P. 54(b) FOR
Water Right 29-00274C

2004 AUG 20 PM 4:04

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: DEBRA ANN SCHUBERT
WILLIAM W SCHUBERT
1646 N MINK CREEK RD
POCAHELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY: PORINEUF RIVER

QUANTITY: 0.05 CFS

PRIORITY DATE: 06/17/1902

POINT OF DIVERSION: 1075 R35E S30 SESENE Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.05 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED THE USE
OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS
RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

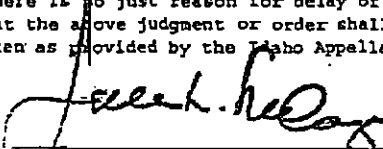
PLACE OF USE: Irrigation Within Bannock County
1075 R35E S30 SESENE 2.3
2.3 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules


John M. Melanton
Presiding Judge of the
Snake River Basin Adjudication

7074 AUG 20 PM 4: 04

LOST 911 MT-SRBA
 TWIN FALLS CO., IDAHO
 FILED

3736
PAGE 1
Aug-20-2004

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 29-00274E

2004 AUG 20 PM 4:04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: DWIGHT MORRINGTON
MARITA MORRINGTON
832 N MINK CREEK RD
POCATELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY: FDRINEUT RIVER

QUANTITY: 0.02 CFS

PRIORITY DATE: 06/17/1902

POINT OF DIVERSION: 1075 R35E S11 SWNE Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.02 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

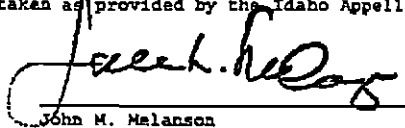
PLACE OF USE: Irrigation Within Bannock County
1075 R35E S11 NENE 0.9
0.9 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.R.C. SECTION 42-1412(6)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P. that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Malanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA
Case No 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 29-00274F

2004 AUG 20 PM 4:04

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS:

PEGGY SCHEIBE
WILFRED S SCHEIBE
1588 MINK CREEK RD
POCAHONTO, ID 83201

SOURCE:

MINK CREEK TRIBUTARY, PORINEUF RIVER

QUANTITY:

0.07 CFS

PRIORITY DATE:

06/17/1902

POINT OF DIVERSION:

1075 R35E S30 SESENE Within Bannock County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-15 TO 09-15	0.07 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS
RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE:

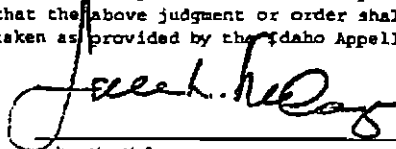
Irrigation Within Bannock County
1075 R35E S30 SESENE 3.6
3.6 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.R.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

794 AUG 20 PM 4: 04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

3:59 PAGE 1
Aug-20-2004

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO. IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No 39576)
)
) Water Right 29-002741

2004 AUG 20 PM 4:04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: G K MAIKIN
1506 N MINK CREEK RD
POCAHELIO ID 83204

JEANNE MAIKIN
1508 N MINK CREEK RD
POCAHELIO ID 83204

SOURCE: MINK CREEK TRIBUTARY: PORINEUP RIVER

QUANTITY: 0.12 CFS

USE OF THIS RIGHT WITH RIGHT NO. 29-02402 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 0.12 CFS.

PRIORITY DATE: 06/17/1902

POINT OF DIVERSION: 1075 E35E S30 SESENE Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.12 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED THE USE
OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS
RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Bannock County
1075 E35E S30 SESENE 6.0
6.0 Acres Total

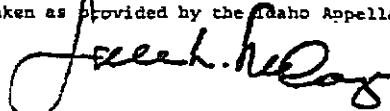
USE OF THIS RIGHT WITH RIGHT NO. 29-02402 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 6.0 ACRES IN A SINGLE
IRRIGATION SEASON

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 19576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-00274J

NAME AND ADDRESS: ARDYS L HOLTE
KARL E HOLTE
1506 N MINK CREEK RD
POCATELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY: PORTNEUF RIVER

QUANTITY: 0.04 CFS

PRIORITY DATE: 06/17/1902

POINT OF DIVERSION: T07S R35E S30 NENESE Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.04 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

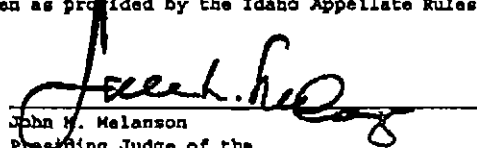
PLACE OF USE: Irrigation Within Bannock County
T07S R35E S30 NESE 2.0
2.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 29-00275

NAME AND ADDRESS: MINK CREEK IRRIGATION CORP
2008 N MINK CREEK RD
POCATELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY: PORTNEUF RIVER

QUANTITY: 1.50 CFS

PRIORITY DATE: 09/07/1904

POINT OF DIVERSION: T07S R35E S29 NENWNW Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	1.50 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS
RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

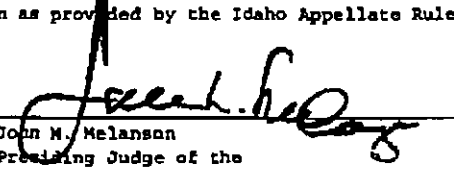
PLACE OF USE:	Irrigation		Within Bannock County
	T07S R35E S19	SESE 2.0	
	S20	SWSW 29.0	
	S29	NWNW 29.0	
	S30	NENE 15.0	
	75.0 Acres Total		

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(5).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39575)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-00276B

2004 AUG 20 PM 4:04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: GAYA M BUSBY
JAY B BUSBY
2352 N APPLE LN
POCAHELLO, ID 83201

SOURCE: MINK CREEK TRIBUTARY: PORINEUF RIVER

QUANTITY: 0.02 CFS

PRIORITY DATE: 08/07/1907

POINT OF DIVERSION: T07S R35E S20 SWNEW Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-01	0.02 CFS

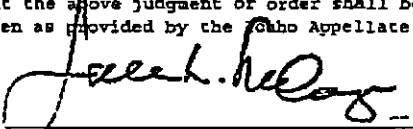
PLACE OF USE: Irrigation Within Bannock County
T07S R35E S20 NESW 1 1
1.1 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
Case No. 39S75) I R C P 54(b) FOR
) Water Right 29-00276C

2004 AUG 20 PM 4:02

FILED
TWIN FALLS CO., IDAHO

NAME AND ADDRESS: DAVID R FISCHER
2446 N MINK CREEK RD
POCAHELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY: PORINEUF RIVER

QUANTITY: 0.034 CFS

USE OF THIS RIGHT WITH THE IRRIGATION PORTION OF RIGHT NO
29-07680 IS LIMITED TO A TOTAL COMBINED DIVERSION-RATE OF 0.038
CFS

PRIORITY DATE: 08/07/1907

POINT OF DIVERSION: 107S R35E S20 SE/4 Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.034 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS
RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Bannock County
 107S R35E S20 NE/4 1.7 Acres Total

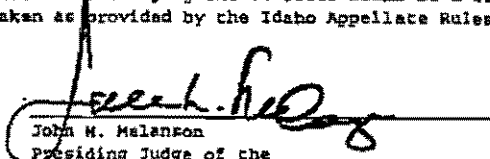
USE OF THIS RIGHT WITH RIGHT NO. 29-07680 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 1.7 ACRES IN A SINGLE
IRRIGATION SEASON

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE I.C. SECTION 42-1412(6)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules


John W. Melanson
Presiding Judge of the
Snake River Basin Adjudication

204 AUG 20 PM 4:02

DISTRICT COURT - SEBA
TWIN FALLS CO., IDAHO
FILED _____

PAGE 1
AUG-20-2004

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-00276E

NAME AND ADDRESS: DENNIS V HICKMAN
JACKIE S HICKMAN
2364 N APPLE LN
POCATELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY; PORTNEUF RIVER

QUANTITY: 0.02 CFS

USE OF THIS RIGHT WITH THE IRRIGATION PORTION OF RIGHT NO:
29-07680 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.028
CFS.

PRIORITY DATE: 08/07/1907

POINT OF DIVERSION: T07S R35E S20 SWNEW Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.02 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS
REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Bannock County
T07S R35E S20 NESW 1.0
1.0 Acres Total

USE OF THIS RIGHT WITH RIGHT NO. 29-07680 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 1.0 ACRES IN A SINGLE
IRRIGATION SEASON.

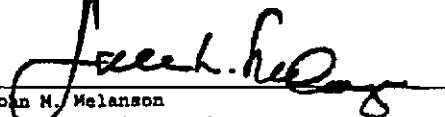
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Joan M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-00277A

NAME AND ADDRESS: LOUISE A MURRAY
256 N JOHNSON
POCATELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY: PORTNEUF RIVER

QUANTITY: 0.07 CFS

PRIORITY DATE: 07/10/1910

POINT OF DIVERSION: T07S R35E S31 NESENE Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.07 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

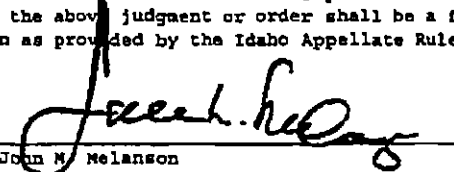
PLACE OF USE: Irrigation Within Bannock County
T07S R35E S31 SENE 3.3
3.3 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

NAME AND ADDRESS: KILGORE LIVING TRUST
1502 S MINK CREEK RD
POCATELLO, ID 83204

3771

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF WINN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 29-02323

NAME AND ADDRESS: KILGORE LIVING TRUST
1502 S MINK CREEK RD
POCATELLO, ID 83204

SOURCE: SPRING TRIBUTARY: EAST FORK MINK CREEK

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR DOMESTIC USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY

PRIORITY DATE: 10/06/1952

POINT OF DIVERSION: T08S R35E S08 NWNESE Within Bannock County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 10-31	0.04 CFS
Domestic	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Irrigation Within Bannock County
T08S R35E S08 NESW 1.0 NWSW 3.0
4.0 Acres Total

Domestic Within Bannock County
Same as Irrigation

USE OF THIS RIGHT WITH RIGHT NO. 29-02257 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 4 ACRES IN A SINGLE IRRIGATION
SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 4 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON

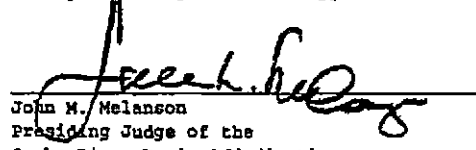
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR DOMESTIC
USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

2004 MAR 22 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No 39576)
PARIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-04235

NAME AND ADDRESS: RALPH FARRINGTON
PO BOX 2924
NEWPORT BEACH, CA 92659-2924

SOURCE: GIBSON JACK CREEK TRIBUTARY; PORINEUF RIVER

QUANTITY: 0.06 CFS

PRIORITY DATE: 02/26/1969

POINT OF DIVERSION: 1075 R35E S17 SWNW Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.06 CFS

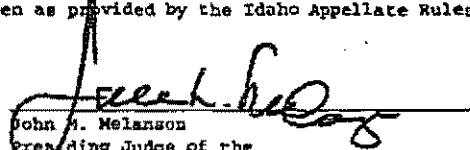
PLACE OF USE: Irrigation Within Bannock County
1075 R35E S17 NWSW 2.0
2.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules


John A. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO. IN AND FOR THE COUNTY OF TWIN FALLS

PAGE 1
MAR-17-2004

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

NAME AND ADDRESS: EDWARD DE SANO
MARSHA DE SANO
2110 N MINK CREEK RD
POCAHELLO, ID 83204

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.04 CFS
	Stockwater	01-01 TO 12-31	0.01 CFS

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT.

RULE 54 (b) CERTIFICATE

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 29-10608

2004 JUL 30 AM 8:52
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED *jm*

NAME AND ADDRESS: GEORGE T CRIST
MORENE CRIST
2382 APPLE LN
POCATELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY, FORTNEUF RIVER

QUANTITY: 0.024 CFS

USE OF THIS RIGHT WITH THE IRRIGATION PORTION OF RIGHT NO.
29-07680 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.032
CFS.

PRIORITY DATE: 12/31/1907

POINT OF DIVERSION: T07S R35E S20 SWNESE Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.024 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS
RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Bannock County
T07S R35E S20 NESE 1.2
1.2 Acres Total

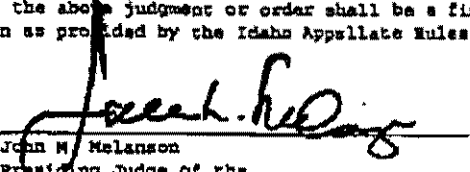
USE OF THIS RIGHT WITH RIGHT NO. 29-07680 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 1.2 ACRES IN A SINGLE
IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 29-10843

2007 JUN 23 PM 3:04

FILED
JUN 23 2007
TWIN FALLS, IDAHO
J.M.

NAME AND ADDRESS: ACEL LAMAR HOLMES
SHIRLEY J HOLMES
178 N MINK CREEK RD
POCATELLO, ID 83204

SOURCE: MINK CREEK TRIBUTARY: FORTNEUF RIVER

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 01/15/1960

POINT OF DIVERSION: T07S R15E S32 NWSWSW Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.03 CFS
	Stockwater	04-01 TO 10-31	0.02 CFS

PLACE OF USE: Irrigation
T07S R15E S32 SWSW 0.9 Within Bannock County
0.9 Acres Total

Stockwater Within Bannock County
Same as Irrigation

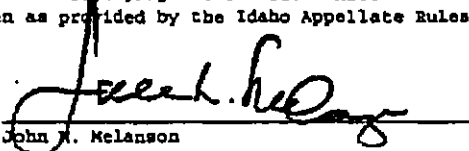
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John N. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDWIN FALLS

NAME AND ADDRESS: WILMA MURN
7773 W FORBINEUF RD
FOCAIELLO, ID 83204

PAGE 1
MAR-17-2004

2004 MAR 22 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 29-11079

NAME AND ADDRESS: KAREN BECKER
8167 W PORINEUF RD
POCAHELLO, ID 83204

DELLA F JOHNSON
8173 W PORINEUF RD
POCAHELLO, ID 83204

SOURCE: NINK CREEK TRIBUTARY: PORINEUF RIVER

QUANTITY: 0.10 CFS

USE OF THIS RIGHT WITH RIGHT NO. 29-13434 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 0.15 CFS

PRIORITY DATE: 04/01/1938

POINT OF DIVERSION: 1079 R35E S20 SE3/4 Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.10 CFS

PLACE OF USE:	Irrigation	Within Bannock County
	1079 R35E S20	SW3/4 5.0
	7.3 Acres Total	NW3/4 2.3

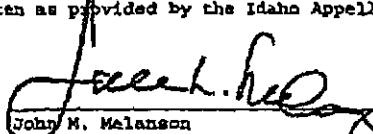
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 5.0 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b) I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules


John M. Malanson
Presiding Judge of the
Snake River Basin Adjudication

3780

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-11300

2009 DEC -2 PM 1:31
DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED *JM*

NAME AND ADDRESS: BARTON ARMSTRONG
JERI ARMSTRONG
9021 GIBSON JACK
POCATELLO, ID 81204

SOURCE: GIBSON JACK CREEK TRIBUTARY: PORTNEUF RIVER

QUANTITY: 0.15 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 04/01/1945

POINT OF DIVERSION: T07S R35E S17 NWSNW Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.15 CFS
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Irrigation Within Bannock County
T07S R35E S17 SWSW 8.0
8.0 Acres Total
Stockwater Within Bannock County
Same as Irrigation

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
John M. Melanson
Residing Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN FC SMDA

Case No. 19576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 29-11321

2001 NOV -3 11 11: 53
DISTRICT COURT - SRBA
TRINITY FALLS CH. IDAHO
FILED *AM*

NAME AND ADDRESS: JEFFERY L MATKIN
PO BOX 1885
FOCATELLO, ID 83205

SOURCE: CAMPDELL CREEK TRIBUTARY: MINK CREEK
MINK CREEK TRIBUTARY: FORTNEUF RIVER

QUANTITY: D. DO CF5

USE OF THIS RIGHT WITH RIGHT NO. 29-2406 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.14 CFS.

PRIORITY DATE: 06/17/1902

POINT OF DIVERSION: T07S R35E S30 SWNESE Within Bannock County
SENESE
SWSESE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	0.90 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE:	Irrigation	Within Bannock County
	TOTG RISE S10 .	NESE 7.7
	18.9 Acres Total	SESE 11.2

USE OF THIS RIGHT WITH RIGHT NO. 29-2406 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 10.8 ACRES IN A SINGLE IRRIGATION SEASON.

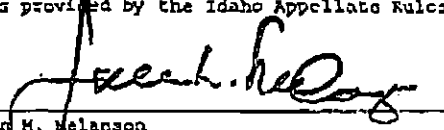
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

3733

PAGE 1
MAY-17-2004

NAME AND ADDRESS: KERY W HOWARD
LOUISE HOWARD
7688 W PORINEUT RD
POCAHELLO, ID 83264

PLACE OF USE:	Irrigation	Within Bamock County
	1075 R35E S21	N25W 4.3
	4 3 Acres Total	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

EXHIBIT 54 (b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John H. Melanson
Presiding Judge of the
Snake River Basin Adjudication

3735

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-13434

NAME AND ADDRESS: DELLA F JOHNSON
8173 W FORTNEUF RD
POCATELLO, ID 83204

KAREN BECKER
8167 W FORTNEUF RD
POCATELLO, ID 83204

SOURCE: NINK CREEK TRIBUTARY: FORTNEUF RIVER

QUANTITY: 0.07 CFS

USE OF THIS RIGHT WITH RIGHT NO. 29-11079 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 0.15 CFS.

PRIORITY DATE: 04/01/1967

POINT OF DIVERSION: T07S R35E S20 SE3SWNE Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.07 CFS

PLACE OF USE:	Irrigation	Within Bannock County
	T07S R35E S20 SWNE 5.0 NWSE 2.3	
	7.3 Acres Total	

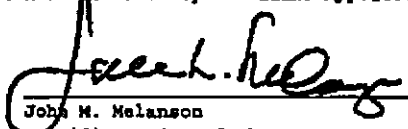
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 2.3 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

Josephine P. Beeman #1806
 Beeman & Associates, P.C.
 409 West Jefferson Street
 Boise, ID 83702
 (208) 331-0950
 (208) 331-0954 (Facsimile)
jo.beeman@beemanlaw.com

DISTRICT COURT - SRBA
 TWIN FALLS CO., IDAHO
 FILED _____
 2007 FEB 15 PM 4 59

Sarah A. Klahn
 William A. Hillhouse II
 White & Jankowski, LLP
 511 16th St., Suite 500
 Denver, CO 80202
 303-595-9441
 303-825-5632 (Facsimile)
sarahk@white-jankowski.com

Attorneys for City of Pocatello

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
)	
	)	CITY OF POCATELLO'S MOTION FOR JUDICIAL
Case No. 39576	)	NOTICE OF RECORDS IN RELATED SUBCASES
_____	)	AND MEMORANDUM IN SUPPORT

COMES NOW the City of Pocatello, by and through its counsel of record, Josephine P. Beeman, and submits this motion for the Court to take Judicial Notice of the records in the following subcases: City of Roberts, 35-04241, 35-07886; City of Aberdeen, 35-04070, 35-04071, 35-07808; Lamb Weston Inc., 35-02603, 35-04127, 35-12670; City of Hazelton, 36-02282, 36-04250, 36-07858; City of Jerome, 36-02518, 36-04195, 36-04196, 36-08237, 36-15361; City of Paul, 36-04083, 36-07206, 36-07899; City of Rupert, 36-04075, 36-07115, 36-07656, 36-07862, 36-07863, 36-15488, 36-15489; City of Twin Falls, 36-02603A, 36-02646;

City of Burley, 36-02648A, 36-02729, 36-08154; Union Pacific Railroad Co, 36-04203, 36-04204.

This motion is made pursuant to I.R.C.P. 44(d), I.R.E. 201, and I.C. § 9-101.

MEMORANDUM

Prior to the Director's Report for Basin 29, IDWR routinely recommend to the SRBA Court entry of partial decrees for claimants for alternate points of diversion for multiple water rights without the condition that is recommended for Pocatello's wells. See City of Roberts, 35-04241, 35-07886; City of Aberdeen, 35-04070, 35-04071, 35-07808; Lamb Weston Inc, 35-02603, 35-04127, 35-12670; City of Hazelton, 36-02282, 36-04250, 36-07858; City of Jerome, 36-02518, 36-04195, 36-04196, 36-08237, 36-15361; City of Paul, 36-04083, 36-07206, 36-07899; City of Rupert, 36-04075, 36-07115, 36-07656, 36-07862, 36-07863, 36-15488, 36-15489; City of Twin Falls, 36-02603A, 36-02646; City of Burley, 36-02648A, 36-02729, 36-08154; Union Pacific Railroad Co, 36-04203, 36-04204.

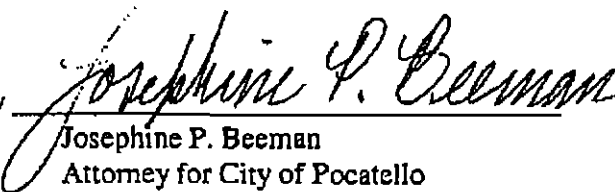
This Court is requested to take judicial notice of these facts in the just-listed subcases within this SRBA proceeding. A trial court may take judicial notice of its own records. *State v. Palmlund*, 95 Idaho 150, 504 P.2d 1199 (1972); *Larson v. State*, 91 Idaho 908, 435 P.2d 248 (1967); *Saydes v. Cuorio*, 71 Idaho 17, 226 P.2d 172 (1950), and of records arising from prior proceedings in a case. *Caldwell City v. Roark*, 98 Idaho 897, 899 fn. 1, 575 P.2d 495, 497 fn. 1 (1978). A court may also take judicial notice of related proceedings, *Almgren v. Idaho Dept. of Lands*, 136 Idaho 180, 183, 30 P.3d 958, 961 (2001), and of other proceedings that affect the subject matter then pending before it. *Roberts v. Hollandsworth*, 101 Idaho 522, 524, 616 P.2d 1058, 1060 (1980).

Therefore, pursuant to this authority, this Court may properly take judicial notice of the records in subcases listed above, in respect to the alternate points of diversion for multiple water rights that were made in those cases, which were made without the condition that is recommended for Pocatello's wells in this case.

Respectfully submitted this 15th day of February, 2007.

BEEMAN & ASSOCIATES, P.C.

By


Josephine P. Beeman
Attorney for City of Pocatello

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of February 2007, I caused a true copy of the foregoing **CITY OF POCA TELLO'S MOTION FOR JUDICIAL NOTICE OF RECORDS IN RELATED SUBCASES AND MEMORANDUM IN SUPPORT** to be served on the following by U.S. First Class Mail unless indicated as faxed or hand delivered:

UNITED STATES OF AMERICA REPRESENTED BY: US DEPARTMENT OF JUSTICE ENVIRONMENT & NAT'L RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	C. TOM ARKOOSH ARKOOSH LAW OFFICES, CHTD. PO BOX 32 GOODING, IDAHO 83330
STATE OF IDAHO REPRESENTED BY: NATURAL RESOURCES DIV CHIEF STATE OF IDAHO ATTORNEY GENERAL'S OFFICE PO BOX 44449 BOISE, ID 83711-4449	W. KENT FLETCHER FLETCHER LAW OFFICE PO BOX 248 BURLEY, IDAHO 83318
DIRECTOR OF IDWR PO BOX 83720 BOISE, ID 83720-0098	ROGER D. LING LING ROBINSON & WALKER PO BOX 396 RUPERT, IDAHO 83350
	JOHN A. ROSHOLT TRAVIS L. THOMPSON BARKER ROSHOLT & SIMPSON 113 MAIN AVE. WEST, SUITE 303 TWIN FALLS, IDAHO 83301-6167

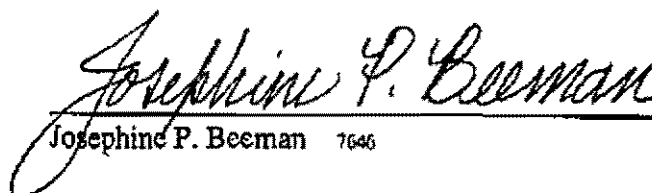

Josephine P. Beeman 7646

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
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29-07222
29-07322
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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2007 FEB 16 PM 3 29

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Attorneys for City of Pocatello

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
)	
	)	Notice of Service of Pocatello's Witness and Exhibit List
)	
Case No. 39576)	
_____)	

PLEASE TAKE NOTICE that on this 15th day of February 2007, the City of Pocatello served by U.S. mail upon the parties to this action listed in the attached Certificate of Service, a true and correct copy of **POCATELLO'S WITNESS AND EXHIBIT LIST**, dated February 15, 2007.

BEEMAN & ASSOCIATES, P.C.
Attorneys for the City of Pocatello

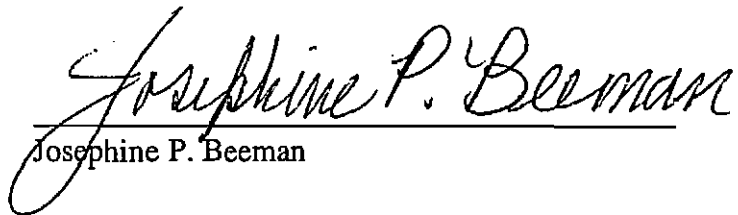
By Josephine P. Beeman
Josephine P. Beeman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of February 2007, I caused a true copy of the foregoing **NOTICE OF SERVICE OF POCATELLO'S WITNESS AND EXHIBIT LIST** to be served on the following by U.S. First Class Mail unless indicated as faxed or hand delivered:

UNITED STATES OF AMERICA REPRESENTED BY: US DEPARTMENT OF JUSTICE ENVIRONMENT & NAT'L RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	C. TOM ARKOOSH ARKOOSH LAW OFFICES, CHTD. PO BOX 32 GOODING, IDAHO 83330
STATE OF IDAHO REPRESENTED BY: NATURAL RESOURCES DIV CHIEF STATE OF IDAHO ATTORNEY GENERAL'S OFFICE PO BOX 44449 BOISE, ID 83711-4449	W. KENT FLETCHER FLETCHER LAW OFFICE PO BOX 248 BURLEY, IDAHO 83318
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	JOHN A. ROSHOLT TRAVIS L. THOMPSON BARKER ROSHOLT & SIMPSON 113 MAIN AVE. WEST, SUITE 303 TWIN FALLS, IDAHO 83301-6167


Josephine P. Beeman

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EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
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• 29-02354
29-02382
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29-04221
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DISTRICT COURT - SRBA
TWIN FALLS, IDAHO
FILED *[Signature]*
2007 FEB 16 PM 3 37

Attorneys for City of Pocatello

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	) Subcase Nos. 29-00271, 29-00272, 29-00273
)
Case No. 39576)
	) MOTION FOR LEAVE TO FILE
	) AMENDED NOTICES OF CLAIM
)

Pursuant to SRBA Administrative Order No. 1, Sections 4d, 10f, and 10h, and Rule 7(b)(3) and Rule 55(c) of the Idaho Rules of Civil Procedure, the City of Pocatello, by and through its counsel of record, Beeman & Associates, P.C., respectfully moves this Court for an order allowing them to file Amended Notices of Claim in Subcase Nos. 29-00271, 29-00272, and 29-00273. A copy of the Amended Notices of Claim to be filed and served are attached as Exhibits A, B, and C.

When Pocatello filed its objections to these three claims, it indicated it would seek to amend the claims to show the City's interconnected wells as alternate points of diversion. The IDWR 706 Report has consistently treated these claims, with 29-4222, as the group of surface water rights for which the interconnected wells are sought as alternate points of diversion.

RESPECTFULLY SUBMITTED this 15th day of February 2007.

BEEMAN & ASSOCIATES, P.C.

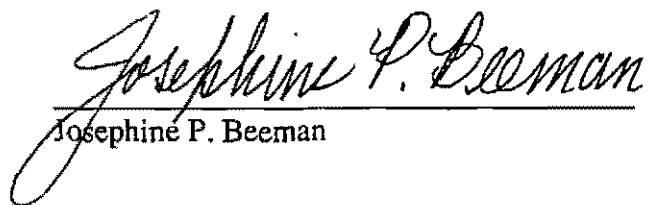
By *Josephine P. Beeman*
Josephine P. Beeman

3736

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of February 2007, I caused a true copy of the foregoing **MOTION FOR LEAVE TO FILE AMENDED NOTICES OF CLAIMS** to be served on the following by U.S. First Class Mail unless indicated as faxed or hand delivered:

UNITED STATES OF AMERICA REPRESENTED BY: US DEPARTMENT OF JUSTICE ENVIRONMENT & NAT'L RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	C. TOM ARKOOSH ARKOOSH LAW OFFICES, CHTD. PO Box 32 GOODING, IDAHO 83330
STATE OF IDAHO REPRESENTED BY: NATURAL RESOURCES DIV CHIEF STATE OF IDAHO ATTORNEY GENERAL'S OFFICE PO BOX 44449 BOISE, ID 83711-4449	W. KENT FLETCHER FLETCHER LAW OFFICE PO Box 248 BURLEY, IDAHO 83318
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	JOHN A. ROSHOLT TRAVIS L. THOMPSON BARKER ROSHOLT & SIMPSON 113 MAIN AVE. WEST, SUITE 303 TWIN FALLS, IDAHO 83301-6167


Josephine P. Beeman

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED
2007 FEB 16 PM 4 59

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcases See Exhibit A
)	
Case No. 39576	)	SECOND ORDER ON SUMMARY
	)	JUDGMENT
)	

I. PROCEDURAL BACKGROUND

These subcases were claimed in the SRBA by the City of Pocatello (hereafter "Pocatello") under a state basis. Pocatello claimed the same water use under a federal theory under subcase number 29-11609. Pocatello's federal theory is currently on appeal to the Idaho Supreme Court. *Director's Reports* were issued by the Idaho Department of Water Resources (hereafter "IDWR") on the state-based claims. Pocatello filed *Objections* to each subcase. Pocatello previously filed a *Motion for Summary Judgment on IDWR's Authority Under I.C. § 42-1425* (hereafter "*First Summary Judgment*"). In the *First Summary Judgment*, Pocatello argued that the "accomplished transfer" statute, I.C. § 42-1425, required the SRBA court to allow accomplished changes in its water rights without the conditions recommended by IDWR. Pocatello argued that no conditions should be imposed because the accomplished changes did not injure other rights. The *First Summary Judgment* was **denied**. (*Order on Summary Judgment* (Aug. 18, 2006))

A second round of summary judgment motions was filed by the parties and argued on January 17, 2007. Pocatello filed *City of Pocatello's Motion for Summary Judgment on Municipal Purpose of Use, Interconnection, and Injury under I.D. § 42-1425* (hereafter

"Pocatello's Second Motion"). The Surface Water Coalition filed a cross motion titled *Surface Water Coalition's (SWC) Motion for Summary Judgment*. The State of Idaho participated in the briefing and at oral argument.

A. Pocatello's Second Motion

Pocatello's Second Motion asks for summary judgment on three issues. First, Pocatello argues the purpose of use for water rights 29-7119, 29-7118, 29-7770, and 29-7431 is "municipal purpose" as a matter of law. Second, Pocatello seeks a determination that Mink Creek, Gibson Jack Creek, the Lower Portneuf River Valley Aquifer, the Snake River, and the Eastern Snake Plain Aquifer are interconnected as a matter of law. Third, Pocatello again argues that there is no evidence its accomplished transfers injured existing water rights.

B. Surface Water Coalition's Motion

The American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, Minidoka Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company filed a joint motion for summary judgment. These parties are collectively referred to as the "Surface Water Coalition." The Surface Water Coalition argues that Pocatello cannot collaterally attack the elements of its previously licensed and decreed water rights. Therefore, those rights must be decreed with the elements previously determined.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56(c) provides for summary judgment where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Courts look to "the pleadings, depositions, and admissions on file, together with the affidavits, if any," to determine whether the moving party is entitled to summary judgment. I.R.C.P. 56(c). The facts are usually liberally construed in favor of the nonmoving party who is to be given the benefit of all favorable inferences which might reasonably be drawn from the evidence. *G & M Farms v. Funk Irrigation, Co.*, 119 Idaho 514, 808 P.2d 851 (1991). The burden of proving the absence of genuine issues of material facts rests on the moving party. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 425 P.2d

III. FACTS

The following facts are not in dispute.

1. Water rights in the SRBA are generally interconnected.
2. All water rights at issue are owned by Pocatello, a municipal entity.
3. Water rights 29-7118, 29-7119, 29-7770, and 29-7431 are used on land owned by Pocatello.
4. Water rights 29-7118, 29-7119, 29-7770, and 29-7431 were claimed in the SRBA with an irrigation purpose of use.
5. Water rights 29-7118, 29-7119, 29-7770, and 29-7431 were previously licensed by IDWR with an irrigation purpose of use.
6. The *Director's Reports* for 29-7118, 29-7119, 29-7770, 29-7431 concluded purpose of use is irrigation.
7. The *Director's Reports* and *Supplemental Director's Report* for 29-271, 272, and 273 (Mink Creek Rights) conclude that adding the city's wells as points of diversion would injure existing rights.
- 7.5 The *Director's Reports* and *Supplemental Director's Report* concludes that adding the wells as alternative points without the proposed condition would injure existing rights.
8. Pocatello's expert report concluded that adding the city's wells as points of diversion would not injure existing rights.
9. Water Right 29-7770 was licensed in 2003 with a municipal purpose.

IV. POCATELLO'S MOTION

A. Purpose of Use (29-7118, 29-7119, 29-7770, and 29-7431)

Pocatello argues that purpose of use for 29-7118, 29-7119, 29-7770, and 29-7431 is municipal as a matter of law because the water uses fit within the broad definition of "municipal uses" defined by statute and by common law.

Idaho Code § 42-202(b)(6) defines “municipal purposes” as “residential, commercial, industrial, irrigation of parks and open space, and related purposes.” Water rights 29-7118, 29-7119, 29-7770, and 29-7431 are used on land near the city’s airport and wastewater treatment plant. *Supplemental Director’s Report* at 7, 19. These water rights come from groundwater wells used to irrigate growing crops. The wells are not connected to the city’s interconnected well system. The *Director’s Reports* recommended the purpose of use as irrigation, not municipal. *Id* at 7.

All four water claims are based on licenses. The licenses list “irrigation” as the purpose of use. In fact, Pocatello initially claimed purpose of use was “irrigation” for all four rights, but later amended the claims to assert a “municipal” purpose. The *Director’s Reports* considered a possible municipal purpose for these rights, but concluded the proper purpose was irrigation. Water rights 29-7118 and 29-7119 are used by a local farmer who leases Pocatello’s land to grow crops near the airport. Water right 29-7431 uses water and effluent to grow crops on land near the city’s wastewater plant. IDWR concluded the use was for agricultural cropland, not municipal purposes. Thus, the *Director’s Reports* gave purpose of use as irrigation.

It is possible that the water use relating to 29-7118 and 29-7119 could fit within the broad statutory and common law definitions of “municipal use,” since the rights are owned by a municipality and because the definition of municipal use is fairly broad. Pocatello may offer proof at trial that the purpose of use changed after the rights were licensed. Therefore, genuine issues of material fact remain for trial.

Summary Judgment is **denied** as to purpose of use for 29-7118 and 29-7119.

Water Right 29-7770 was licensed in 2003 with irrigation as purpose of use. The *Director’s Report* found irrigation as the purpose. IDWR considered the 1984 application which identified the water as necessary for irrigating crops. *Supplemental Director’s Report* at 21. Furthermore, IDWR considered Pocatello’s 1987 request to define purpose of use as domestic, commercial, municipal, and industrial or “DCMI.” IDWR declined to label the purpose DCMI. *Id* at 21. The *Director’s Report* concluded that purpose is irrigation. The motion for summary judgment seeking a municipal purpose for 29-7770 is **denied**.

Water Right 29-7431 was licensed to Pocatello in 1987. The license determined irrigation as the purpose of use. Pocatello now asserts a municipal purpose and seeks to change the source from groundwater to wastewater.

The prior license for this right is evidence of the elements of the right. A party may not collaterally attack the licensing determination in the SRBA. The proper remedy for a party who disagrees with a licensing decision is an appeal of that decision. Nevertheless, a license is not conclusive proof of the elements of a right, since changes to a right may occur after a license. Here, Pocatello could offer proof of a transfer under I.C. § 42-222 or proof of an accomplished transfer under I.C. § 42-1425. If there is no I.C. § 42-222 transfer for this right, Pocatello has a relatively narrow time frame for a change in purpose or source. Such a change would have to occur after the date of the license (June 11, 1987) and prior to the deadline established in I.C. § 42-1425 (November 19, 1987). However genuine issues of material fact remain, because a change occurring after the license issued may have occurred.

Summary Judgment is **denied** as to 29-7431.

B. Interconnection

Pocatello seeks a ruling that Mink Creek, Gibson Jack Creek, LPRVA (identified by Pocatello as the Lower Portneuf River Aquifer), the Snake River, and the Eastern Snake Plain Aquifer are interconnected. At the hearing, Pocatello clarified that it was not seeking a holding that would result in a final determination of the elements of any water rights, but is asking the court to clarify which facts are without controversy. Presumably, Pocatello refers to the court's authority pursuant to I.R.C.P. 56(d).

Idaho Rules of Civil Procedure 56(d) allows a court to ascertain which facts exist without substantial controversy:

[T]he court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just.

I.R.C.P. 56(d).

The SRBA court has long recognized the general interconnection of water rights. For example, the *Commencement Order* (Nov. 23, 1987) for the SRBA defined the boundaries of the SRBA as those parts of the state where the water is tributary to the Snake River. Water rights in the SRBA are presumed to be generally "interconnected" or related. *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411 (1997). This "interconnected" relationship of water

rights is presumed, but is so general that it usually doesn't resolve many issues. The degree of the interconnectedness is what is significant. In these subcases, for example, the crux of the disagreement is whether the surface water rights (Mink Creek and Gibson Jack Creek) are so closely connected to groundwater sources, such as the Eastern Snake Plain Aquifer, that wells may be added as alternative points of diversion. A determination of general connectedness is insufficient to support such a finding.

The Surface Water Coalition appears to define "interconnection" as a basic hydrological nexus between water rights or water sources. Pocatello appears to define "interconnection" as a very direct and immediate hydrological connection between surface water and groundwater sources. Pocatello and the Surface Water Coalition apparently disagree over the meaning and application of "interconnection"; however, they do not appear to actually disagree about the existence of a general interconnection.

Pocatello seeks the addition of its groundwater wells as alternative points of diversion for its surface water rights. *Supplemental Director's Report* at 10. IDWR concluded that the wells should not be alternative points of diversion because allowing them would incorrectly permit Pocatello to withdraw water from wells utilizing the early priority associated with the surface water rights. In addition, IDWR declined to add the wells because it requires a showing of an "immediate and direct hydrological connection" between the source and the wells. *Id* at 11-12; IDWR Transfer Processing Memo No. 24(Oct. 30, 2002). IDWR also requires the existing point of diversion (surface) and the proposed point of diversion (groundwater) to be so closely connected that "diversion and use of water from the proposed point of diversion would have substantially the same effect on the hydrologically connected source as diversion and use of water from the original point of diversion." *Supplemental Director's Report* at 12.

On the other hand, Pocatello supplied an expert report that concludes diversion of Pocatello's surface water rights at the city's wells "will not injure the surface water coalition water rights." *Affidavit of Celeste Thane*, attachment B at 3.

In conclusion, genuine issues of material fact remain as to whether the connection between Pocatello's surface diversions and groundwater diversions are close enough to justify adding its wells as alternative points of diversion for its surface rights. It is important to note that the connection must be so close that the groundwater and surface water are essentially the same source. That is because I.C. § 42-1425 does not authorize an accomplished change of

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sources. However, there is no substantial controversy regarding a *general interconnection* between these sources.

C. Injury

Pocatello urges the court to determine that its groundwater wells may be added as alternative points of diversion to its surface water rights. It argues these alternative points of diversion should be added as a matter of law because their addition was part of an accomplished transfer and no injury was shown.

Pocatello argued in its *First Summary Judgment* that the *Director's Reports* improperly placed conditions on these rights because the subcases were not "remanded" to IDWR as set forth in I.C. § 42-1425(2)(a). The subcases have now been remanded to IDWR; no changes were made to the *Director's Reports*.

Pocatello has 22 wells connected to a municipal water system that provide culinary water within its service area. *Pocatello's Motion for Summary Judgment* at 4. The 22 wells are claimed as alternative points of diversion for surface water rights held by Pocatello. Pocatello urges the court to determine as a matter of law that these wells be added as points of diversion. Pocatello alleges that no injury to other rights has been shown by other parties. Pocatello's expert report supports the contention that adding wells as points of diversion results in no injury. The report contends "once the depletions from groundwater use reach a steady state, they are essentially the same as depletion that would have resulted had the water right continued to be diverted at the original points." *Affidavit of Celeste Thane*, attachment B at 3. Pocatello's expert report concludes that the overall impact of adding points of diversion may have little injury. "As a result, exercise of the city's surface water rights at the groundwater alternate points of diversion will not result in a material change in the seasonal timing of stream depletions to the detriment of downstream surface water users." However, that opinion is rebutted.

The *Director's Reports* and the *Supplemental Director's Report* determined that injury to existing water rights would occur if the 22 wells were added as points of diversion without any conditions. The *Director's Reports*, therefore, added the following condition:

To the extent necessary for administration, water was first appropriated or used from: Pocatello Well No. _____, located in [legal description] on [date] in the amount of _____ cfs.

Without this condition, Pocatello could “withdraw water from its wells under the priority dates associated with its surface water rights.” *Supplemental Director’s Report* at 10-11. The *Director’s Reports* concluded that adding the 22 wells without restriction would injure existing water rights. The *Director’s Reports* opined that adding the wells would improperly move water with later priorities ahead of the priority line. “Without the condition, IDWR would not have recommended the multiple, alternative points of diversion because injury to other water right was likely.” *Id* at 12-13. The condition “maintain[s] the historical [priority] relationship between various water users.” *Id* at 15.

Pocatello contends that no injury has been shown. To the contrary, the *Director’s Reports* and *Supplemental Director’s Report* adding alternate points of diversion squarely contradict the conclusion reached by Pocatello’s expert. The *Director’s Reports* conclude that adding the points of diversion would injure existing water rights. Pocatello’s expert concludes that adding the points of diversion would not injure existing water rights. These opposing opinions create a classic situation where genuine issues of material fact remain for trial.

It should be pointed out that if there are intervening rights appropriated by other users from the same source after Pocatello appropriated its surface right but before drilling its wells for the alternate points of diversion, injury to junior rights is presumed.

Summary Judgment as to injury is **denied**.

V. SURFACE WATER COALITION’S MOTION

The Surface Water Coalition argues that Pocatello is prohibited as a matter of law from changing its points of diversion for 29-271, 29-272, and 29-273. The Surface Water Coalition asserts that would be an impermissible collateral attack of a prior decree. The Surface Water Coalition explains that points of diversion for these rights were previously decreed.

A. Mink Creek Rights (29-271, 29-272, and 29-273)

Pocatello has three rights located on Mink Creek: 29-271, 29-272, and 29-273. These rights were previously decreed in *Smith et. al. v. City of Pocatello* (Bannock Co. Dist. Court) (June 5, 1926). The *Smith* court decreed these rights with surface water points of diversion; no wells were included. The *Director’s Reports* concluded Pocatello’s wells should not be added as additional points of diversion. Pocatello filed objections for 29-271, 29-272, and 29-273 seeking to include both the original surface water points of diversion and “all groundwater points of

diversion for the City of Pocatello's municipal rights." Although Pocatello filed objections to the point of diversion element, it did not amend its claims to add groundwater points of diversion.

Prior decrees have long been treated in the SRBA as persuasive evidence of the elements of a water right. The court has repeatedly ruled that the SRBA is not an appropriate forum for collaterally attacking a license or prior decree. The appropriate forum for asserting a prior decree is in error is an appeal of that decree. However, prior decrees are not conclusive proof of the elements of a water right. The SRBA court has consistently recognized that change of use or failure to use a water right can sometimes change a right after it is decreed. *Memorandum Decision and Order on Challenge and Order Disallowing Water Right Based on Federal Law* (Subcase No. 29-11609) (Oct. 6, 2006). For example, a decree can be forfeited or abandoned. The elements of a right can be changed by an administrative transfer under I.C. § 42-222 or an accomplished transfer under I.C. § 42-1425.

The *Director's Reports* concluded that Pocatello's wells should not be alternate points of diversion for the Mink Creek water rights. One reason for the conclusion is that IDWR found the Mink Creek rights are not closely related to the wells either geographically or hydrologically. "Pocatello's point of diversion from Mink Creek is approximately six miles away from the closest Pocatello well." *Supplemental Director's Report* at 11. Pocatello's expert concluded that the wells and surface water are connected and related. Additionally, Pocatello argued it could change points of diversion without filing a transfer for changes prior to enactment of I.C. § 42-222.

Therefore, Pocatello may provide evidence of a pre-1969 transfer, a valid I.C. § 42-222 transfer or a valid I.C. § 42-1425 accomplished transfer showing a change occurred after the *Smith Decree*. Genuine issues of material fact remain for trial. Summary Judgment is **denied**.¹

¹ The Surface Water Coalition correctly notes that Pocatello filed objections to the point of diversion element for 29-271, 29-272 and 29-273, but failed to amend its claims for those rights. The SRBA Administrative Order requires parties to amend their claims if seeking changes to place of use or point of diversion not included in the original claims. "A claimant may not amend a claim by filing an objection or a response." *AOI* 4(d)(1)(b). However, this rule in *AOI* was established to ensure notice to other parties. The manner in which the claims, amendments, and objections were filed here was somewhat confusing. But there is no doubt the parties to these subcases had notice that Pocatello intended to claim well diversions for their Mink Creek rights. The court declines to strike the objections; and Pocatello will be allowed to amend its claims prior to trial.

B. Irrigation Rights (29-7118 and 29-7119)

Water rights 29-7118 and 29-7119 were licensed in 1975 with irrigation as the purpose of use. The administrative licenses were not appealed. Pocatello filed claims for these two rights in 1990, listing irrigation as the purpose of use. Pocatello later objected to purpose of use, asserting a municipal purpose.

The licenses for these two rights determined a specified acreage and defined the place of use. Pocatello's original claims listed the place of use as licensed. In 2003, Pocatello amended its claims and now seeks a purpose of use as "municipal" and a place of use as Pocatello's municipal service area. The *Director's Reports* for these two rights recommended an irrigation purpose of use and the acreage and place of use as licensed.

Prior licenses are evidence of the elements of a water right. In addition, the *Director's Reports* are evidence of the elements of a water right. However, Pocatello may still allege that a change in purpose occurred after the licenses issued. If a valid transfer pursuant to I.C. § 42-222 or a valid accomplished transfer pursuant to I.C. § 42-1425 occurred, it is possible for Pocatello to meet its burden of proof on the purpose and place of use elements. Therefore, genuine issues of material fact remain for trial, and summary judgment is **denied**.

C. Waste Water Right (29-7431)

Pocatello obtained a license for water right 29-7431 on June 11, 1987. This right was licensed for irrigation purpose of use for 777 acres. In 1990, Pocatello claimed the right as licensed. The *Director's Report* recommended the right with an irrigation purpose of use. Pocatello now seeks to prove a right with a municipal purpose of use and with wastewater as the source, rather than groundwater. Here, Pocatello may offer proof of a transfer under I.C. § 42-222 or an accomplished transfer under I.C. § 42-1425. If Pocatello seeks an accomplished transfer, it must assert a change after licensing on June 11, 1987, and before the deadline of November 19, 1987, set forth in the statute.

Pocatello will face evidence of the *Director's Report* and the prior license at trial. However, genuine issues of material fact remain because valid changes which occurred after the license issued may change the elements of a water right. Summary Judgment for 29-7431 is **denied**.

D. Water Right 29-7770

This water right was licensed in 2003 for irrigation purposes. Pocatello seeks a municipal purpose and a place of use as the city's "service area."

Licenses are persuasive proof of the elements of a water right, but are not conclusive proof. Changes occurring after the license may provide evidence to support a change in the elements. Typically, the post-licensing changes are a valid transfer or accomplished transfer. There is no evidence of record that an administrative transfer occurred. In order to overcome the licensed elements, Pocatello must show a valid accomplished transfer under I.C. § 42-1425.

The statute allows SRBA claimants to assert water rights with changes to elements if three factors exist:

1. The change was made prior to November 19, 1987;
2. No other water rights existing on the date of the change were injured; and
3. The change did not result in an enlargement of the right.

Under the unique procedural history of this case, Pocatello cannot show a valid accomplished transfer. This right was licensed in 2003. Pocatello may not collaterally attack that license in the SRBA. The only way to change the elements from the license would require a valid post-licensing change to the water right. Pocatello cannot make a case for an accomplished transfer under I.C. § 42-1425 because accomplished changes to elements of a right are required by statute to have occurred prior to November 19, 1987. Since the license was issued in 2003, any change after the license would not comply with the statutory deadline of 1987. A valid accomplished change could not be alleged.

Therefore summary judgment is **granted** as to 29-7770.

VI. ATTORNEY FEES

Pocatello argues that it is entitled to attorney fees against the Surface Water Coalition related to this *Summary Judgment Motion* and for the Surface Water Coalition's failure to admit to an interconnection between sources. Pocatello did not cite rules of procedure or a statutory basis for its request. Without a clearer understanding for the basis of the request, this Special Master is not inclined to award attorney fees. No party has prevailed on the interconnection issue because a general interconnection is presumed for water rights in the SRBA. The Surface Water Coalition does not appear to have alleged that those water rights are hydrologically

independent. The conflict during discovery occurred because the parties were at odds over the definition of the term "interconnection."

VII. CONCLUSION

Pocatello's Second Motion is **denied** as to whether purpose of use is municipal. Although Pocatello has set forth facts supporting a municipal purpose of use, those are contrasted by prior licenses and the conclusions of the *Director's Reports* concluding purpose of use is irrigation. Because genuine issues of material fact remain, summary judgment is **denied**.

Pocatello's Second Motion is **granted** as to the issue of interconnection; however, the holding is only that there is a general relationship between the sources and water rights at issue. It is understood that this general interconnectedness does not resolve the issue of injury or prove that Pocatello's wells may be added as alternate points of diversion.

Summary judgment is **denied** as to injury on *Pocatello's Second Motion*. Pocatello's expert report comes to a conclusion diametrically opposed to the conclusion of the *Supplemental Director's Report*. Genuine issues of material fact remain.

The Surface Water Coalition's motion is **denied** as to the points of diversion for 29-271, 29-272, and 29-273. Although a prior decree determined the point of diversion elements, Pocatello may offer proof of post-decree changes.

The Surface Water Coalition's motion is **denied** as to purpose of use for 29-7118, 29-7119, and 29-7431. Although these rights were previously licensed with an irrigation purpose of use, Pocatello may offer proof of post-licensure changes to support its contention of a municipal purpose.

The Surface Water Coalition's motion is **granted** as to 29-7770. This right was licensed in 2003. No I.C. § 42-222 transfer was alleged. Pocatello cannot make a case for an accomplished transfer under I.C. §42-1425 because such a change would have to occur after licensure (2003) and prior to the 1987 deadline imposed by I.C. §42-1425. A valid accomplished transfer case cannot be made.

Dated February 16, 2007.

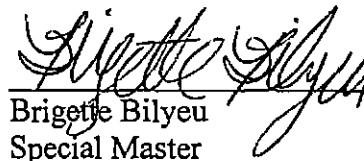

Brigitte Bilyeu
Special Master

EXHIBIT A

Subcase Nos:

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07222
29-07322
29-07375
29-07431
29-07450
29-07502
29-07770
29-07782
29-11339
29-11344
29-11348
29-13558
29-13559
29-13560
29-13561
29-13562
29-13636
29-13637
29-13638
29-13639

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SECOND ORDER ON SUMMARY JUDGMENT was mailed on February 15, 2007, with sufficient first-class postage to the following:

AMERICAN FALLS RESERVOIR

Represented by:
C. THOMAS ARKOOSH
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
Phone: 208-934-8872

AMERICAN FALLS RESERVOIR

Represented by:
DAVID HEIDA
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
Phone: 208-934-8872

CITY OF POCA TELLO

Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
Phone: 208-331-0950

STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
Phone: 208-436-4717

CITY OF POCA TELLO

Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITTREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
Phone: 303-595-9441

MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
Phone: 208-733-0700

UNITED STATE OF AMERICA
UNITED STATES OF AMERICA

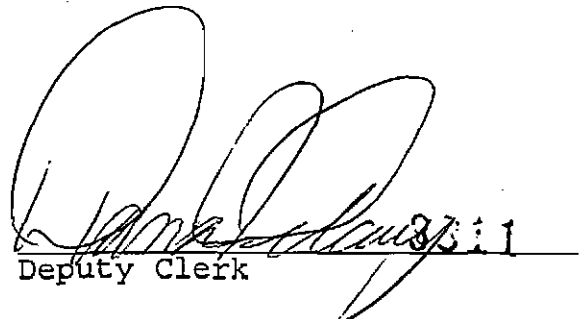
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
Phone: 208-678-3250

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

UNITED STATES OF AMERICA
US DEPT OF JUSTICE, ENRD
550 W FORT ST MSC 033
BOISE, ID 83724



FEB 21 2007

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 29-00271
Date Received:
Receipt No:
Received By:

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF POCA TELLO Phone: (208) 232-4311
PO BOX 4169
POCA TELLO ID USA 83201

2. Date of Priority: February 26, 1869

3. Source: Mink Creek Tributary: Portneuf River

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
T08S	R34E	S13	NESE within	BANNOCK County	
T07S	R34E	S24	SESW within	BANNOCK County	
32 WELLS (Attachment A)					

5. Description of diverting works:
DIVERSION DAM, HEADGATE, PIPELINE TO SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MUNICIPAL	1/01	12/31	3.220	

7. Total Quantity Appropriated is:

3.220 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses: MUNICIPAL, CITY OF POCA TELLO

10. Place of use: WITHIN THE SERVICE AREA OF THE CITY OF POCA TELLO MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW.

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
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11. Place of use in counties:

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used: SEE ATTACHMENT.

14. Remarks:

P/U WITHIN CITY OF POCA TELLO & VICINITY, IN BANNOCK AND POWER COUNTIES.

The claimant's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. Right to use such storage facilities is therefore claimed as a part of the surface or ground water claim asserted herein.

15. Basis of Claim: DECREED.

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am the City Attorney of the City of Pocatello, a Municipal Corporation, that I have signed the foregoing document in the space below as the City Attorney of the City of Pocatello and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent: _____

Title and Organization: _____

A. Dean Tranne
City Attorney, City of Pocatello

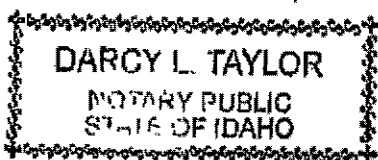
2-16-07
Date

STATE OF IDAHO)

) ss.

County of Bannock)

Subscribed and sworn to before me this 16 day of February 2007.



Darcy L. Taylor
NOTARY PUBLIC

Residing at _____

Pocatello, Idaho

My commission Expires _____

8/12/12

ATTACHMENT A

Township	Range	Section	% of	%,	County of
7S	34E	1		NE	BANNOCK (well #2)
7S	34E	1		NE	BANNOCK (well #3)
6S	34E	26	NE	NW	BANNOCK (well #10)
6S	34E	35	SE	NE	BANNOCK (well #12)
7S	34E	12	NW	NE	BANNOCK (well #13)
7S	35E	7	NE	SW	BANNOCK (well #14, Cree)
7S	35E	6	NW	SE	BANNOCK (well #15)
6S	34E	26	SW	SE	BANNOCK (well #16)
7S	34E	1	SE	SE	BANNOCK (well #17)
6S	34E	15	NE	NW	BANNOCK (well #18)
6S	34E	7	SE	NE	BANNOCK (well #19)
6S	34E	23	SW	NE	BANNOCK (well #21)
6S	34E	23	SE	NW	BANNOCK (well #22)
6S	34E	23	NW	NE	BANNOCK (well #23)
6S	34E	15	NW	NE	BANNOCK (well #26, PIP)
6S	34E	15	NE	NE	BANNOCK (well #27)
7S	34E	1	NE	SE	BANNOCK (well #28)
6S	34E	23	NE	SW	BANNOCK (well #29)
6S	34E	35	NW	NE	BANNOCK (well #30)
6S	34E	15	NE	SE	BANNOCK (well #31)
6S	34E	16	NE	NE	BANNOCK (well #32)
7S	35E	18	SE	NE	BANNOCK (well #33)
6S	34E	15	NE	SE	BANNOCK (well #34)
6S	33E	10	NE	SE	POWER (well #35, Phillips 3)
6S	33E	15	SW	NE	POWER (well #39, Phillips 1)
6S	33E	10	NE	SE	POWER (well #40, Phillips 2)
6S	33E	9	SW	SW	POWER (well #41, Airport 2)
6S	33E	16	NW	SW	POWER (well #42, Airport 1)
6S	34E	9	SW	SE	BANNOCK (well #43, Ward)
7S	35E	16	SW	SW	BANNOCK (well #44)
6S	33E	12	SE	NE	POWER (WPC plant)
7S	35E	6	NW	NW	BANNOCK (Restlawn)

3315

FEB 21 2007

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 29-00272
Date Received:
Receipt No:
Received By:

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID USA 83201

Phone: (208)232-4311

2. Date of Priority: October 1, 1901

3. Source: Mink Creek

Tributary: Portneuf River

4. Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County Type

T08S R34E S13 NESE within BANNOCK County

T07S R34E S24 SESW within BANNOCK County
32 WELLS (Attachment A)

5. Description of diverting works:

DIVERSION DAM & PIPELINE TO RESERVOIR, HEADGATE, PIPELINE TO SYSTEM,
STORAGE TANKS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MUNICIPAL	1/01	12/31	0.560	

7. Total Quantity Appropriated is:

0.560 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses: MUNICIPAL, CITY OF POCA TELLO

10. Place of use: WITHIN THE SERVICE AREA OF THE CITY OF POCA TELLO MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW.

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
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11. Place of use in counties:

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used: SEE ATTACHMENT.

14. Remarks:

P/U WITHIN CITY OF POCA TELLO & VICINITY, IN BANNOCK AND POWER COUNTIES.

The claimant's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. Right to use such storage facilities is therefore claimed as a part of the surface or ground water claim asserted herein.

15. Basis of Claim: DECREED.

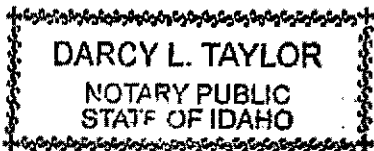
(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

I do solemnly swear or affirm that I am the City Attorney of the City of Pocatello, a Municipal Corporation, that I have signed the foregoing document in the space below as the City Attorney of the City of Pocatello and that the statements contained in the foregoing document are true and correct.

2-16-07
Date

STATE OF IDAHO)
) ss.
County of Bannock)

Subscribed and sworn to before me this 16 day of February 2007.



Nancy L. Taylor
NOTARY PUBLIC
Residing at *Locatello, Idaho*
My commission Expires *8/12/12*

ATTACHMENT A

Township	Range	Section	¼ of ¼,	County of
7S	34E	1	NE	BANNOCK (well #2)
7S	34E	1	NE	BANNOCK (well #3)
6S	34E	26	NE NW	BANNOCK (well #10)
6S	34E	35	SE NE	BANNOCK (well #12)
7S	34E	12	NW NE	BANNOCK (well #13)
7S	35E	7	NE SW	BANNOCK (well #14, Cree)
7S	35E	6	NW SE	BANNOCK (well #15)
6S	34E	26	SW SE	BANNOCK (well #16)
7S	34E	1	SE SE	BANNOCK (well #17)
6S	34E	15	NE NW	BANNOCK (well #18)
6S	34E	7	SE NE	BANNOCK (well #19)
6S	34E	23	SW NE	BANNOCK (well #21)
6S	34E	23	SE NW	BANNOCK (well #22)
6S	34E	23	NW NE	BANNOCK (well #23)
6S	34E	15	NW NE	BANNOCK (well #26, PIP)
6S	34E	15	NE NE	BANNOCK (well #27)
7S	34E	1	NE SE	BANNOCK (well #28)
6S	34E	23	NE SW	BANNOCK (well #29)
6S	34E	35	NW NE	BANNOCK (well #30)
6S	34E	15	NE SE	BANNOCK (well #31)
6S	34E	16	NE NE	BANNOCK (well #32)
7S	35E	18	SE NE	BANNOCK (well #33)
6S	34E	15	NE SE	BANNOCK (well #34)
6S	33E	10	NE SE	POWER (well #35, Phillips 3)
6S	33E	15	SW NE	POWER (well #39, Phillips 1)
6S	33E	10	NE SE	POWER (well #40, Phillips 2)
6S	33E	9	SW SW	POWER (well #41, Airport 2)
6S	33E	16	NW SW	POWER (well #42, Airport 1)
6S	34E	9	SW SE	BANNOCK (well #43, Ward)
7S	35E	16	SW SW	BANNOCK (well #44)
6S	33E	12	SE NE	POWER (WPC plant)
7S	35E	6	NW NW	BANNOCK (Restlawn)

FEB 21 2007

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 29-00273
Date Received:
Receipt No:
Received By:

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF POCA TELLO Phone: (208)232-4311
PO BOX 4169
POCA TELLO ID USA 83201

2. Date of Priority: October 1, 1917

3. Source: Mink Creek Tributary: Portneuf River

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
T08S	R34E	S13	NESE within BANNOCK County		
T07S	R34E	S24	SESW within BANNOCK County		
32 WELLS (Attachment A)					

5. Description of diverting works:
DIVERSION DAM, HEADGATE, PIPELINE TO SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MUNICIPAL	1/01	12/31	1.218	

7. Total Quantity Appropriated is:

1.218 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses: MUNICIPAL, CITY OF POCA TELLO

10. Place of use: WITHIN THE SERVICE AREA OF THE CITY OF POCA TELLO MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW.

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
----------	-------	---------	------------	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used: SEE ATTACHMENT.

14. Remarks:

P/U WITHIN CITY OF POCA TELLO & VICINITY, IN BANNOCK AND POWER COUNTIES.

The claimant's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. Right to use such storage facilities is therefore claimed as a part of the surface or ground water claim asserted herein.

15. Basis of Claim: DECREED.

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am the City Attorney of the City of Pocatello, a Municipal Corporation, that I have signed the foregoing document in the space below as the City Attorney of the City of Pocatello and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent: A. Dean Tranter

Title and Organization: _____

City Attorney, City of Pocatello

2-16-07

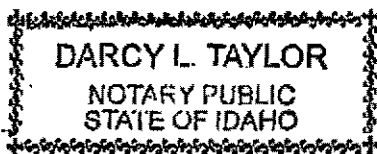
Date

STATE OF IDAHO)

) ss.

County of Bannock)

Subscribed and sworn to before me this 16 day of February 2007.



Darcy L. Taylor
NOTARY PUBLIC
Residing at Pocatello, Idaho

My commission Expires 8/12/12

ATTACHMENT A

Township	Range	Section	% of	%,	County of
7S	34E	1		NE	BANNOCK (well #2)
7S	34E	1		NE	BANNOCK (well #3)
6S	34E	26	NE	NW	BANNOCK (well #10)
6S	34E	35	SE	NE	BANNOCK (well #12)
7S	34E	12	NW	NE	BANNOCK (well #13)
7S	35E	7	NE	SW	BANNOCK (well #14, Cree)
7S	35E	6	NW	SE	BANNOCK (well #15)
6S	34E	26	SW	SE	BANNOCK (well #16)
7S	34E	1	SE	SE	BANNOCK (well #17)
6S	34E	15	NE	NW	BANNOCK (well #18)
6S	34E	7	SE	NE	BANNOCK (well #19)
6S	34E	23	SW	NE	BANNOCK (well #21)
6S	34E	23	SE	NW	BANNOCK (well #22)
6S	34E	23	NW	NE	BANNOCK (well #23)
6S	34E	15	NW	NE	BANNOCK (well #26, PIP)
6S	34E	15	NE	NE	BANNOCK (well #27)
7S	34E	1	NE	SE	BANNOCK (well #28)
6S	34E	23	NE	SW	BANNOCK (well #29)
6S	34E	35	NW	NE	BANNOCK (well #30)
6S	34E	15	NE	SE	BANNOCK (well #31)
6S	34E	16	NE	NE	BANNOCK (well #32)
7S	35E	18	SE	NE	BANNOCK (well #33)
6S	34E	15	NE	SE	BANNOCK (well #34)
6S	33E	10	NE	SE	POWER (well #35, Phillips 3)
6S	33E	15	SW	NE	POWER (well #39, Phillips 1)
6S	33E	10	NE	SE	POWER (well #40, Phillips 2)
6S	33E	9	SW	SW	POWER (well #41, Airport 2)
6S	33E	16	NW	SW	POWER (well #42, Airport 1)
6S	34E	9	SW	SE	BANNOCK (well #43, Ward)
7S	35E	16	SW	SW	BANNOCK (well #44)
6S	33E	12	SE	NE	POWER (WPC plant)
7S	35E	6	NW	NW	BANNOCK (Restlawn)

3323

2007 FEB 23 AM 8:32

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	ORDER RESOLVING MOTION TO
	)	TAKE JUDICIAL NOTICE
Case No. 39576)	
	)	WATER RIGHT NOS. : EXHIBIT A
	)	(City of Pocatello)


A pretrial conference was held on the above subcases on February 21, 2007. The court heard the *Motion to Take Judicial Notice* filed by the State of Idaho and the *Motion to Take Judicial Notice* filed by the City of Pocatello.

The State of Idaho sought judicial notice of a number of partial decrees entered in the SRBA for water rights with sources on or tributary to Mink Creek and Gibson Jack Creek. The State's *Motion* was resolved when the State of Idaho determined that it would offer the partial decrees at trial. (Exhibit C to the *Motion to Take Judicial Notice*)

The City of Pocatello sought judicial notice of partial decrees and other related documents for multiple water rights in the SRBA. The City of Pocatello sought judicial notice of these documents to show how IDWR has recommended and the SRBA has decree other water rights. The City of Pocatello's *Motion* was resolved when Pocatello determined that it would offer the partial decrees at trial as an exhibit.

IT IS SO ORDERED.

DATED: February 23, 2007.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER RESOLVING MOTION TO TAKE JUDICIAL NOTICE was mailed on February 23, 2007, with sufficient first-class postage to the following:

AMERICAN FALLS RESERVOIR

Represented by:
C. THOMAS ARKOOSH
301 MAIN STREET
PO BOX 32
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Phone: 208-934-8872

AMERICAN FALLS RESERVOIR

Represented by:
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Phone: 208-934-8872

CITY OF POCATELLO

Represented by:
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BOISE, ID 83702
Phone: 208-331-0950

STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
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PO BOX 396
RUPERT, ID 83350-0396
Phone: 208-436-4717

CITY OF POCATELLO

Represented by:
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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
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Phone: 208-733-0700

UNITED STATE OF AMERICA
UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
Phone: 208-678-3250

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

UNITED STATES OF AMERICA
US DEPT OF JUSTICE, ENRD
550 W FORT ST MSC 033
BOISE, ID 83724

EXHIBIT A

Subcase Nos:

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07222
29-07322
29-07375
29-07431
29-07450
29-07502
29-07770
29-07782
29-11339
29-11344
29-11348
29-13558
29-13559
29-13560
29-13561
29-13562
29-13636
29-13637
29-13638
29-13639

2007 FEB 23 AM 8:33

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED cf

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	ORDER GRANTING MOTION TO
	)	AMEND CLAIMS
Case No. 39576)	
	)	SUBCASE NOS.: 29-00271, 29-00272,
	)	AND 29-273

I. PROCEDURAL BACKGROUND

The City of Pocatello filed a *Motion for Leave to File Amended Notices of Claim* on February 16, 2007. The *Motion* was heard at the pretrial conference on February 21, 2007. The City of Pocatello asked for leave to amend its claims for subcases 29-00271, 29-00272, and 29-00273 to conform with the *Objections* it filed in those subcases.

II. STANDARD OF REVIEW

The SRBA Court administrative rules establish that motions to amend claims "shall be freely given when justice so requires." *SRBA Administrative Order 1 (A01)* § 4d (2) (k)

III. FINDINGS

The *Motion to Amend Claims* was granted. The *Amended Claims* will be date stamped February 21, 2007. Because the trial on these subcases will begin on February 26, 2007, the court addressed the status of all pleadings in the subcases.

The Idaho Department of Water Resources indicated that it was familiar with the changes sought by the City of Pocatello. IDWR indicated that it would not need to file an *Amended Director's Report* because its recommendations would not change.

The City of Pocatello indicated that it would maintain the position set forth in its existing *Objections*.

The State of Idaho and the parties collectively referred to as the Surface Water Coalition
ORDER GRANTING MOTION TO AMEND CLAIMS
G:\29ORDERS\271.272.273.ORDRGRANT AMENDCLAIM
2/22/07


3827

indicated that they would maintain the positions set forth by them in their existing *Responses* for these three subcases.

IT IS ORDERED that the Motion to Amend Claims is **granted**.

The parties will not be required to file new *Objections* or *Responses* since no *Amended Director's Report* shall be filed. The existing *Objections* and *Responses* filed by the parties shall remain in effect.

DATED: February 23, 2007.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO AMEND CLAIMS was mailed on February 23, 2007, with sufficient first-class postage to the following:

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AMERICAN FALLS RESERVOIR

Represented by:
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PO BOX 32
GOODING, ID 83330
Phone: 208-934-8872

CITY OF POCA TELLO

Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
Phone: 208-331-0950

STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
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BOISE, ID 83711-4449

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
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Phone: 208-436-4717

CITY OF POCA TELLO

Represented by:
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Phone: 303-595-9441

MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
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Phone: 208-733-0700

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
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Phone: 208-678-3250

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

AMENDED DIRECTOR'S REPORT**Subcase No. 29-2401**

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	_____ Clerk Deputy Clerk

In Re SRBA

Twin Falls County Civil Case No. 39576

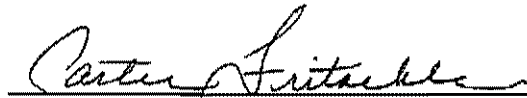
Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-2401 submitted by the Director of the Idaho Department of Water Resources.

A handwritten signature in cursive script, reading "Carter Fritschle", written over a horizontal line.

Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006 .

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-2401

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 12.220 CFS

PRIORITY DATE: 10/16/1958

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	12.220 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 13 located in T07S, R34E, S01, SESE in the amount of 0.89 cfs, from Pocatello Well No. 16 located in T06S, R34E, S26, SWSE in the amount of 6.67 cfs and from Pocatello Well No. 18 located in T06S, R34E, S15, NENW in the amount of 4.66 cfs.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3332

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Pocatello Well No. 13 was also known as the Riverside Golf Course Well.

CERTIFICATE OF SERVICE

I certify that on _____, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

2. Copies to:

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alo@cableone.net

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A & B IRRIGATION DISTRICT
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TWIN FALLS CANAL COMPANY

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UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
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☐ Facsimile
☐ E-mail
☐ Hand-Delivered

Signature of person mailing form

3336

AMENDED DIRECTOR'S REPORT

Subcase No. 29-2499

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
FEB 27 2007
By _____ Clerk Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3837

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-2499 submitted by the Director of the Idaho Department of Water Resources.



Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-2499

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.100 CFS

PRIORITY DATE: 12/10/1964

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S10 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	4.100 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 27 located in T06S, R34E, S14, NWNW.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3339

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

CERTIFICATE OF SERVICE

I certify that on 3/20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
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2. Copies to:

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DISTRICT NO. 2

Represented by:
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alo@cableone.net

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CITY OF POCA TELLO

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STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
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A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

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rdl@idlfirm.com

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CITY OF POCATELLO

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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
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tlt@idahowaters.com

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UNITED STATES OF AMERICA

Represented by:
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ENVIRONMENT & NATL' RESOURCES
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Peter.C.Monson@us.doj.gov

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Represented by:
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wkf@pmt.org

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☐ E-mail
☐ Hand-Delivered

BANNOCK COUNTY COURTHOUSE
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POCATELLO, ID 83201

- ☒ U.S. Mail, Postage Prepaid
- ☐ Facsimile
- ☐ E-mail
- ☐ Hand-Delivered



Signature of person mailing form

3343

AMENDED DIRECTOR'S REPORT

Subcase No. 29-4221

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	_____ Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3844

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-4221 submitted by the Director of the Idaho Department of Water Resources.



Carter Fritschle
Water Rights Adjudication Section Manager

02/21/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4221

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 2.670 CFS

PRIORITY DATE: 08/02/1943
~~06/01/1946~~

POINT OF DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	1/01 12/31	2.670 CFS

3346

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

~~To the extent necessary for administration, water was first appropriated or used from~~
~~Pocatello Well No. 2 located in T07S, R34E, S01, NWNE,~~
~~on 12/31/1926 in the amount of 3.12 cfs~~
~~Pocatello Well No. 3 located in T07S, R34E, S01, SWNE,~~
~~on 12/31/1926 in the amount of 4.23 cfs~~
~~Pocatello Well No. 7 located in T06S, R34E, S35, NWNE,~~
~~on 12/31/1940 in the amount of 4.46 cfs~~
~~Pocatello Well No. 10 located in T06S, R34E, S26, NENW,~~
~~on 6/15/1948 in the amount of 5.35 cfs~~
~~Pocatello Well No. 12 located in T06S, R34E, S25, SENE,~~
~~on 9/1/1953 in the amount of 6.20 cfs~~
~~Pocatello Well No. 13 located in T07S, R34E, S01, SESE,~~
~~on 9/1/1953 in the amount of 2.22 cfs, and on 10/16/1958 for an additional~~
~~amount of 0.09 cfs~~
~~Pocatello Well No. 14 located in T07S, R35E, S07, NEEW,~~
~~on 12/31/1955 in the amount of 0.22 cfs~~
~~Pocatello Well No. 15 located in T07S, R35E, S06, NWSE,~~
~~on 9/1/1953 in the amount of 1.11 cfs, and on 2/24/1977 for an additional~~
~~amount of 2.23 cfs~~
~~Pocatello Well No. 16 located in T06S, R34E, S26, SWSE,~~
~~on 10/16/1958 in the amount of 6.67 cfs~~
~~Pocatello Well No. 18 located in T06S, R34E, S15, NENW,~~
~~on 10/16/1958 in the amount of 4.66 cfs~~
~~Pocatello Well No. 21 located in T06S, R34E, S23, SWNE,~~
~~on 9/15/1955 in the amount of 3.89 cfs~~
~~Pocatello Well No. 22 located in T06S, R34E, S23, SENW,~~
~~on 10/22/1953 in the amount of 3.68 cfs~~
~~Pocatello Well No. 23 located in T06S, R34E, S23, NWNE,~~
~~on 8/15/1956 in the amount of 4.44 cfs~~
~~Pocatello Well No. 25 located in T06S, R34E, S15, NWNE,~~
~~on 6/1/1945 in the amount of 2.67 cfs~~
~~Pocatello Well No. 27 located in T06S, R34E, S14, NENW,~~
~~on 12/10/1964 in the amount of 4.18 cfs~~
~~Pocatello Well No. 28 located in T07S, R34E, S01, NESE,~~
~~on 8/31/1951 in the amount of 4.90 cfs~~
~~Pocatello Well No. 29 located in T06S, R34E, S23, NEEW,~~
~~on 11/5/1972 in the amount of 6.20 cfs~~
~~Pocatello Well No. 30 located in T06S, R34E, S35, NWNE,~~
~~on 4/25/1976 in the amount of 5.57 cfs~~
~~Pocatello Well No. 31 located in T06S, R34E, S15, NESE,~~
~~on 4/25/1976 in the amount of 0.02 cfs~~
~~Pocatello Well No. 32 located in T06S, R34E, S16, NENE,~~
~~on 4/25/1976 in the amount of 3.45 cfs~~
~~Pocatello Well No. 33 located in T07S, R35E, S18, SENE,~~
~~on 10/1/1963 in the amount of 9.21 cfs~~
~~Pocatello Well No. 34 located in T06S, R34E, S15, NESE,~~
~~on 2/18/1985 in the amount of 7.00 cfs~~

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 26 located in T06S, R34E, S15 NWNE.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

02/21/2007

IDaho DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE
PURSUANT TO SECTION 42-1425, IDAHO CODE.

3348

CERTIFICATE OF SERVICE

I certify that on March 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☒ Hand-Delivered

2. Copies to:

AMERICAN FALLS RESERVOIR
DISTRICT NO. 2
Represented by:
C. THOMAS ARKOOSH
DAVID HEIDA
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
alo@cableone.net

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

CITY OF POCA TELLO
Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
jo.beeman@beemanlaw.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449
david.barber@ag.idaho.gov

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
rdl@idlawfirm.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

CITY OF POCATELLO

Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
sarahk@white-jankowski.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
tlt@idahowaters.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doj.gov

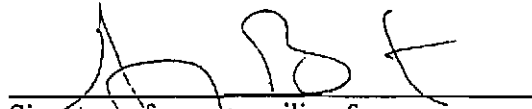
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MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201



Signature of person mailing form

- ☒ U.S. Mail, Postage Prepaid
- ☐ Facsimile
- ☐ E-mail
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AMENDED DIRECTOR'S REPORT

Subcase No. 29-4223

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk
_____	Deputy Clerk

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

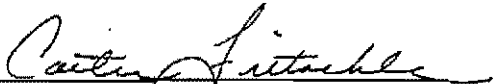
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3852

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-4223 submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4223

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.210 CFS

PRIORITY DATE: 10/01/1962

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	0.210 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 33 located in T07S, R35E, S18, SENE.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3354

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Pocatello Well No. 33 was also known as the Call Well.

3355

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
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☒ Hand-Delivered

2. Copies to:

AMERICAN FALLS RESERVOIR
DISTRICT NO. 2
Represented by:
C. THOMAS ARKOOSH
DAVID HEIDA
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
alo@cableone.net

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

CITY OF POCA TELLO
Represented by:
JOSEPHINE P. BEEMAN
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BOISE, ID 83702
jo.beeman@beemanlaw.com

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☐ Facsimile
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STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449
david.barber@ag.idaho.gov

☒ U.S. Mail, Postage Prepaid
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☐ E-mail
☐ Hand-Delivered

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
rdl@idlawfirm.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

CITY OF POCATELLO

Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITTREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
sarahk@white-jankowski.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
tlth@idahowaters.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doj.gov

☒ U.S. Mail, Postage Prepaid
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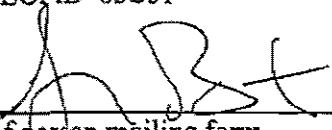
MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201

- ☒ U.S. Mail, Postage Prepaid
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☐ E-mail
☐ Hand-Delivered



Signature of person mailing form

AMENDED DIRECTOR'S REPORT

Subcase No. 29-4224

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk
_____	Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court


Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3859

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-4224 submitted by the Director of the Idaho Department of Water Resources.



Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4224

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 3.890 CFS

PRIORITY DATE: 09/15/1955

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	1/01 12/31	3.890 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 21 located in T06S, R34E, S23, SWNE.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3261

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Pocatello Well No. 21 was also known as Alameda Well No 4.

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
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2. Copies to:

AMERICAN FALLS RESERVOIR
DISTRICT NO. 2
Represented by:
C. THOMAS ARKOOSH
DAVID HEIDA
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
alo@cableone.net

☒ U.S. Mail, Postage Prepaid
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☐ E-mail
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CITY OF POCATELLO
Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
jo.beeman@beemanlaw.com

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☐ Facsimile
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STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449
david.barber@ag.idaho.gov

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
rdl@idlawfirm.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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☐ Hand-Delivered

CITY OF POCA TELLO

Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
sarahk@white-jankowski.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
tlt@idahowaters.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doj.gov

☒ U.S. Mail, Postage Prepaid
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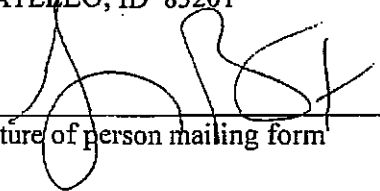
MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201

- ☒ U.S. Mail, Postage Prepaid
- ☐ Facsimile
- ☐ E-mail
- ☐ Hand-Delivered



Signature of person mailing form

AMENDED DIRECTOR'S REPORT

Subcase No. 29-4225

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

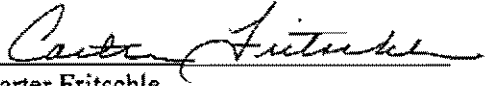
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3836

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-4225 submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4225

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.440 CFS

PRIORITY DATE: 08/15/1956

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	1/01 12/31	4.440 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 23 located in T06S, R34E, S23, NWNE.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3068

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Pocatello Well No. 23 was also known as Alameda Well No. 5.

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

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Clerk of the District Court
Snake River Basin Adjudication
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P.O. Box 2707
Twin Falls, Idaho 83303-2707

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alo@cableone.net

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Represented by:
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409 WEST JEFFERSON STREET
BOISE, ID 83702
jo.beeman@beemanlaw.com

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STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449
david.barber@ag.idaho.gov

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A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
rdl@idlfirm.com

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CITY OF POCATELLO

Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITTREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
sarahk@white-jankowski.com

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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
tlth@idahowaters.com

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UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doj.gov

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MINIDOKA IRRIGATION DISTRICT

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PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

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BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201

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Signature of person mailing form

AMENDED DIRECTOR'S REPORT

Subcase No. 29-4226

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk
	Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

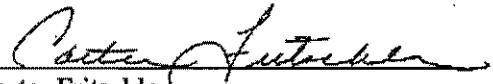
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3873

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-4226 submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4226

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.220 CFS

PRIORITY DATE: 12/31/1955

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NANE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	0.220 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 14 located in T07S, R35E, S07, NESW.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3075

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF DSE
PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Pocatello Well No. 14 was also known as the Cree Well.

3076

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I certify that on March 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

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jo.beeman@beemanlaw.com

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STATE OF IDAHO
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TWIN FALLS CANAL COMPANY

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624 E. CENTER
POCATELLO, ID 83201



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AMENDED DIRECTOR'S REPORT

Subcase No. 29-7106

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court


Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3880

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-7106 submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-7106

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 3.900 CFS

PRIORITY DATE: 11/06/1972

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	3.900 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 29 located in T06S, R34E, S23, NESW.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(5), Idaho Code.

3032

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

3333

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

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STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
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BURLEY IRRIGATION DISTRICT

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CITY OF POCATELLO

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NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

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TWIN FALLS, ID 83301-6167
tlth@idahowaters.com

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ENVIRONMENT & NATL' RESOURCES
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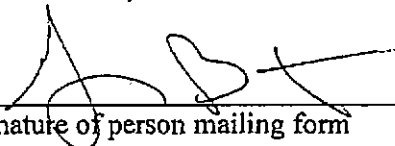
MINIDOKA IRRIGATION DISTRICT

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POCATELLO, ID 83201

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Signature of person mailing form

AMENDED DIRECTOR'S REPORT

Subcase No. 29-7322

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-7322

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 17.070 CFS

PRIORITY DATE: 04/25/1976

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
MUNICIPAL	1/01 12/31	17.070 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 30 located in T06S, R34E, S35, NWNE in the amount of 5.58 cfs, from Pocatello Well No. 31 located in T06S, R34E, S15, NESE in the amount of 8.03 cfs and from Pocatello Well No. 32 located in T06S, R34E, S16, NENE in the amount of 3.46 cfs.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

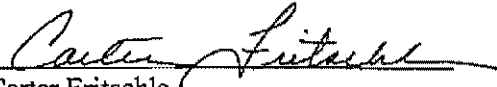
IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

U.S. AIR FORCE OFFICE OF MILITARY AFFAIRS
WASHINGTON, D.C. 20330-5000
ATTENTION: MILITARY AFFAIRS OFFICE
1. NAME: [REDACTED]
2. ADDRESS: [REDACTED]
3. CITY: [REDACTED]
4. STATE: [REDACTED]
5. ZIP: [REDACTED]
6. PHONE: [REDACTED]
7. FAX: [REDACTED]
8. E-MAIL: [REDACTED]
9. OTHER: [REDACTED]

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-7322 submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

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W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

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BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201

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Signature of person mailing form

AMENDED DIRECTOR'S REPORT

Subcase No. 29-11339

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

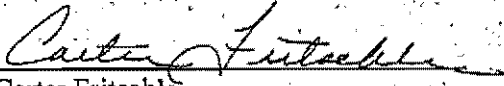
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3894

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-11339
submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-11339

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 3.360 CFS

PRIORITY DATE: 12/31/1961

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
MUNICIPAL	01/01 12/31	3.360 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Alameda Well No. 6 located in T06S, R34E, S14, NESE in the amount of 1.70 cfs and Alameda Well No. 7 located in T06S, R34E, S13, NWSW in the amount of 1.66 cfs.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3396

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

3397

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☒ Hand-Delivered

2. Copies to:

AMERICAN FALLS RESERVOIR
DISTRICT NO. 2
Represented by:
C. THOMAS ARKOOSH
DAVID HEIDA
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
alo@cableone.net

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

CITY OF POCA TELLO
Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
jo.beeman@beemanlaw.com

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☐ Facsimile
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STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449
david.barber@ag.idaho.gov

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☐ Facsimile
☐ E-mail
☐ Hand-Delivered

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
rdl@idlawfirm.com

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☐ Facsimile
☐ E-mail
☐ Hand-Delivered

CITY OF POCATELLO
Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITTREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
sarahk@white-jankowski.com

- ☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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☐ Hand-Delivered

MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY
Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
tlt@idahowaters.com

- ☒ U.S. Mail, Postage Prepaid
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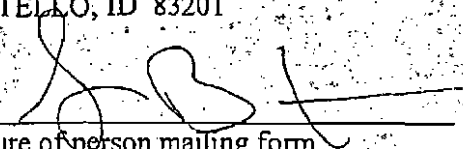
UNITED STATES OF AMERICA
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doi.gov

- ☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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MINIDOKA IRRIGATION DISTRICT
Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

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BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201



Signature of person mailing form

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- ☐ E-mail
- ☐ Hand-Delivered

AMENDED DIRECTOR'S REPORT

Subcase No. 29-11348

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
FEB 27 2007
By _____ _____ Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court


Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3901

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-11348
submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-11348

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.900 CFS

PRIORITY DATE: 08/31/1951

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	4.900 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 28 located in T07S, R34E, S01, NESE.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3953

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Pocatello Well No. 28 was also known as the Turner Well.

CERTIFICATE OF SERVICE

I certify that on MARCH 22, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
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☒ Hand-Delivered

2. Copies to:

AMERICAN FALLS RESERVOIR
DISTRICT NO. 2
Represented by:
C. THOMAS ARKOOSH
DAVID HEIDA
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
alo@cableone.net

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☐ Hand-Delivered

CITY OF POCA TELLO
Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
jo.beeman@beemanlaw.com

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☐ Facsimile
☐ E-mail
☐ Hand-Delivered

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449
david.barber@ag.idaho.gov

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☐ E-mail
☐ Hand-Delivered

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
rdl@idlawfirm.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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CITY OF POCATELLO

Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITTREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
sarahk@white-jankowski.com

☒ U.S. Mail, Postage Prepaid
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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
tlth@idahowaters.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doj.gov

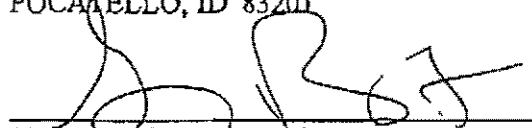
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MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

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☐ E-mail
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BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201



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AMENDED DIRECTOR'S REPORT

Subcase No. 29-13558

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	_____ Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

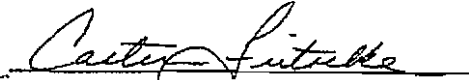
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3908

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-13558
submitted by the Director of the Idaho Department of Water Resources.

A handwritten signature in cursive script, reading "Carter Fritschle", written over a horizontal line.

Carter Fritschle
Water Rights Adjudication Section Manager

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13558

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4159
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 1.340 CFS

PRIORITY DATE: 07/16/1924

POINT OF
DIVERSION:

T06S R34E S14 MNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T05S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S1B SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	1.340 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right, from Alameda Well No. 1 located in T06S, R34E, S23, NESW, which was replaced by Pocatello Well No. 29 located in T06S, R34E, S23, NESW.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3010

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in point of diversion pursuant to
Section 42-1425, Idaho Code.

3011

CERTIFICATE OF SERVICE

I certify that on March 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court	<input type="checkbox"/> U.S. Mail, Postage Prepaid
Snake River Basin Adjudication	<input type="checkbox"/> Facsimile
253 Third Avenue North	<input type="checkbox"/> E-mail
P.O. Box 2707	<input checked="" type="checkbox"/> Hand-Delivered
Twin Falls, Idaho 83303-2707	

2. Copies to:

AMERICAN FALLS RESERVOIR
DISTRICT NO. 2
Represented by:
C. THOMAS ARKOOSH
DAVID HEIDA
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
alo@cableone.net

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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CITY OF POCA TELLO
Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
jo.beeman@beemanlaw.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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☐ Hand-Delivered

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449
david.barber@ag.idaho.gov

☒ U.S. Mail, Postage Prepaid
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☐ E-mail
☐ Hand-Delivered

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
rdl@idlawfirm.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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☐ Hand-Delivered

CITY OF POCA TELLO

Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KIT TREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
sarahk@white-jankowski.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
tlth@idahowaters.com

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Hand-Delivered

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doj.gov

☒ U.S. Mail, Postage Prepaid
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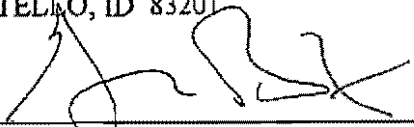
MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

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BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201

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- ☐ E-mail
- ☐ Hand-Delivered



Signature of person mailing form

AMENDED DIRECTOR'S REPORT

Subcase No. 29-13559

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

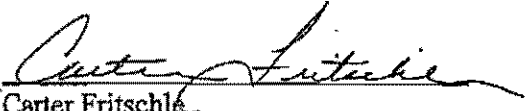
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3915

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-13559
submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13559

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.960 CFS

PRIORITY DATE: 12/31/1925

POINT OF
DIVERSION:

T06S R34E S14 NW1/4 Within BANNOCK County
T06S R34E S15 NW1/4 Within BANNOCK County
T06S R34E S15 NE1/4 Within BANNOCK County
T06S R34E S15 NE1/2 Within BANNOCK County
T06S R34E S15 NE1/4 Within BANNOCK County
T06S R34E S16 NE1/4 Within BANNOCK County
T06S R34E S23 NW1/4 Within BANNOCK County
T06S R34E S23 SW1/4 Within BANNOCK County
T06S R34E S23 SE1/4 Within BANNOCK County
T06S R34E S23 NE1/2 Within BANNOCK County
T06S R34E S26 NE1/4 Within BANNOCK County
T06S R34E S26 SW1/4 Within BANNOCK County
T06S R34E S35 NW1/4 Within BANNOCK County
T06S R34E S35 SE1/4 Within BANNOCK County
T06S R34E S35 NW1/2 Within BANNOCK County
T07S R34E S1 NW1/2 Lot 2 Within BANNOCK County
T07S R34E S1 SW1/4 Within BANNOCK County
T07S R34E S1 NE1/4 Within BANNOCK County
T07S R34E S1 SE1/4 Within BANNOCK County
T07S R35E S6 NW1/4 Within BANNOCK County
T07S R35E S7 NE1/4 Within BANNOCK County
T07S R35E S18 SE1/4 Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	0.960 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Alameda Well No. 2 located in T06S, R34E, S23, NE1/4, which was replaced by Pocatello Well No. 29 located in T06S, R34E, S23, NE1/4.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3017

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

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Clerk of the District Court
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253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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DISTRICT NO. 2
Represented by:
C. THOMAS ARKOOSH
DAVID HEIDA
301 MAIN STREET
PO BOX 32
GOODING, ID 83330
alo@cableone.net

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☐ Facsimile
☐ E-mail
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CITY OF POCATELLO
Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
jo.beeman@beemanlaw.com

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STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449
david.barber@ag.idaho.gov

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A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
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615 H ST
PO BOX 396
RUPERT, ID 83350-0396
rdl@idlawfirm.com

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CITY OF POCATELLO

Represented by:
SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITTRIDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
sarahk@white-jankowski.com

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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
TWIN FALLS, ID 83301-6167
tlt@idahowaters.com

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UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@usdoj.gov

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MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org
TWIN FALLS CANAL COMPANY

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Amended Director's Report # 29-13559

TWIN FALLS, ID 83301-6167

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

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ROGER D LING
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rdl@idlawfirm.com

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SARAH A KLAHN
WHITE & JANKOWSKI LLP
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511 16TH ST STE 500
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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
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TWIN FALLS, ID 83301-6167
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UNITED STATES OF AMERICA

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ENVIRONMENT & NATL' RESOURCES
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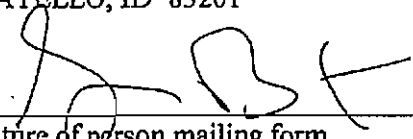
MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

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BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201

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Signature of person mailing form

AMENDED DIRECTOR'S REPORT

Subcase No. 29-13560

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
FEB 27 2007
By _____ Clerk Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

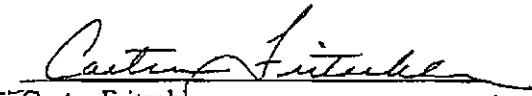
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3923

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-13560
submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13560

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 9.130 CFS

PRIORITY DATE: 12/31/1926

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
MUNICIPAL	01/01 12/31	9.130 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 1 located in T07S, R34E, S01, Lot 2 (NWNE) in the amount of 2.45 cfs, from Pocatello Well No. 2 located in T07S, R34E, S01, Lot 2 (NWNE) in the amount of 2.45 cfs and from Pocatello Well No. 3 located in T07S, R34E, S01, SWNE in the amount of 4.23 cfs. Pocatello Well No. 1 was replaced by Pocatello Well No. 5 located in T06S, R34E, S35, NWNE.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water

3025

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

rights es may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

3026

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

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CITY OF POCATELLO
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jo.beeman@beemanlaw.com

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STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
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david.barber@ag.idaho.gov

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A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

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CITY OF POCA TELLO

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WHITE & JANKOWSKI LLP
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DENVER, CO 80202
sarahk@white-jankowski.com

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TWIN FALLS CANAL COMPANY

Represented by:
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tlt@idahowaters.com

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UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doj.gov

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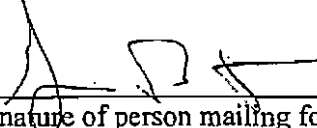
MINIDOKA IRRIGATION DISTRICT

Represented by:
W. KENT FLETCHER
PO BOX 248
BURLEY, ID 83318
wkf@pmt.org

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BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201.

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Signature of person mailing form

AMENDED DIRECTOR'S REPORT

Subcase No. 29-13561

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court


Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3930

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-13561
submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13561

NAME AND ADDRESS: CITY OF POCAATELLO
PO BOX 4169
POCAATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.230 CFS

PRIORITY DATE: 08/31/1931

POINT OF
DIVERSION:

T06S R34E S14 WNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	4.230 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 4 located in T06S, R34E, S35, NWSE

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3032

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

3033
2

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
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CITY OF POCA TELLO

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jo.beeman@beemanlaw.com

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STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
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david.barber@ag.idaho.gov

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A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

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rdl@idlawfirm.com

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CITY OF POCATELLO

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MILNER IRRIGATION DISTRICT
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TWIN FALLS CANAL COMPANY

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tlth@idahowaters.com

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UNITED STATES OF AMERICA

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MINIDOKA IRRIGATION DISTRICT

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BANNOCK COUNTY COURTHOUSE
624 E. CENTER
POCATELLO, ID 83201



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AMENDED DIRECTOR'S REPORT

Subcase No. 29-13562

DISTRICT COURT SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	_____ Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

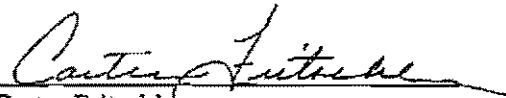
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3037

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-13562
submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13562

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 2.450 CFS

PRIORITY DATE: 12/31/1936

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	2.450 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 6 located in T06S, R34E, S35, NWSE.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3039

10/25/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

3340

CERTIFICATE OF SERVICE

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STATE OF IDAHO

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NATURAL RESOURCES DIV CHIEF
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david.barber@ag.idaho.gov

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BURLEY IRRIGATION DISTRICT

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rdl@idlawfirm.com

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CITY OF POCATELLO

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tlt@idahowaters.com

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ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Peter.C.Monson@us.doj.gov

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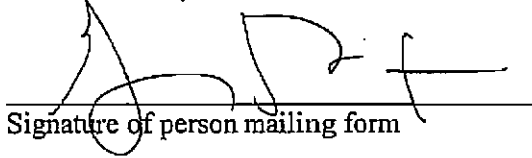
MINIDOKA IRRIGATION DISTRICT

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PO BOX 248
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wkf@pmt.org

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AMENDED DIRECTOR'S REPORT

Subcase No. 29-13637

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk
_____	Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

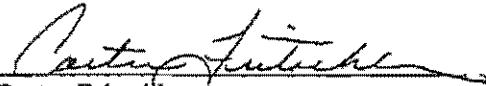
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3944

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-13637
submitted by the Director of the Idaho Department of Water Resources.



Carter Fritschle
Water Rights Adjudication Section Manager

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13637

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.460 CFS

PRIORITY DATE: 12/31/1940

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	4.460 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 7 located in T06S, R34E, S35, NWSE.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3046

10/26/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 29-11343.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

3347

CERTIFICATE OF SERVICE

I certify that on MARCH 20, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court	<input type="checkbox"/> U.S. Mail, Postage Prepaid
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253 Third Avenue North	<input type="checkbox"/> E-mail
P.O. Box 2707	<input checked="" type="checkbox"/> Hand-Delivered
Twin Falls, Idaho 83303-2707	

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C. THOMAS ARKOOSH	<input type="checkbox"/> Hand-Delivered
DAVID HEIDA	
301 MAIN STREET	
PO BOX 32	
GOODING, ID 83330	
alo@cableone.net	

CITY OF POCATELLO	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Represented by:	<input type="checkbox"/> Facsimile
JOSEPHINE P. BEEMAN	<input type="checkbox"/> E-mail
409 WEST JEFFERSON STREET	<input type="checkbox"/> Hand-Delivered
BOISE, ID 83702	
jo.beeman@beemanlaw.com	

STATE OF IDAHO	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
Represented by:	<input type="checkbox"/> Facsimile
NATURAL RESOURCES DIV CHIEF	<input type="checkbox"/> E-mail
STATE OF IDAHO	<input type="checkbox"/> Hand-Delivered
ATTORNEY GENERAL'S OFFICE	
PO BOX 44449	
BOISE, ID 83711-4449	
david.barber@ag.idaho.gov	

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UNITED STATES OF AMERICA

Represented by:
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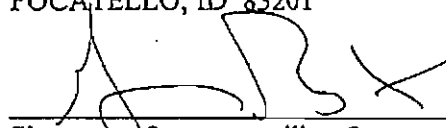
MINIDOKA IRRIGATION DISTRICT

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AMENDED DIRECTOR'S REPORT

Subcase No. 29-13639

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2007	
By _____	Clerk
_____	Deputy Clerk

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

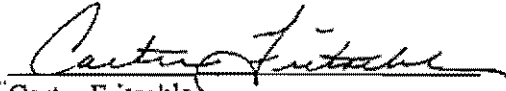
Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Interim Director
Donald V. Shaff, Adjudication Bureau Chief

March 7, 2007

3951

DESCRIPTIVE SUMMARY

Attached is the Amended Director's Report for water right no. 29-13639
submitted by the Director of the Idaho Department of Water Resources.


Carter Fritschle
Water Rights Adjudication Section Manager

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-13639

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 3.680 CFS

PRIORITY DATE: 10/22/1952

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
TD6S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	3.680 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 22 located in T06S, R34E, S23, SENW.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

3053

10/31/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

Pocatello Well No. 22 was also known as Alameda Well No. 3.

3054

CERTIFICATE OF SERVICE

I certify that on MARCH 22, 2007, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

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Twin Falls, Idaho 83303-2707

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DAVID HEIDA
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PO BOX 32
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alo@cableone.net

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CITY OF POCA TELLO
Represented by:
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BOISE, ID 83702
jo.beeman@beemanlaw.com

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STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
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BOISE, ID 83711-4449
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A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
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615 H ST
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rdl@idlawfirm.com

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CITY OF POCATELLO

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TWIN FALLS CANAL COMPANY

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POCATELLO, ID 83201



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MAR 20 2007

CERTIFICATE OF SERVICE

By _____ Clerk
Deputy Clerk

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NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
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113 MAIN AVE W, STE 303
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tl t@idahowaters.com

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Represented by:
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Peter.C.Monson@us.doj.gov

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wkf@pmt.org

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